

In the Matter Of:

BERRY vs DELAWARE COUNTY SHERIFF'S OFFICE

2:16-cv-0296

THOMAS FOWLKES, M.D.

September 29, 2017



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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
COLUMBUS

TERESA BERRY, : CIVIL ACTION
ADMINISTRATOR OF THE :
ESTATE OF RHIANNA :
FILICHIA :
Plaintiff, :
V. :
DELAWARE COUNTY :
SHERIFF'S OFFICE, :
et al., : CASE NO.
Defendants. : 2:16-cv-0296

September 29, 2017

Oral deposition of THOMAS FOWLKES,
M.D., held in the offices of Esquire
Deposition Solutions, 1835 Market Street,
Philadelphia, Pennsylvania 19103, commencing
at 10:58 a.m. on the above date, before
Teresa M. Beaver, a Federally-Approved
Professional Court Reporter and a Notary
Public in the Commonwealth of Pennsylvania.

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I N D E X

WITNESS

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THOMAS FOWLKES, M.D.

BY MS. PROBST

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E X H I B I T S

MARKED

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None

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THOMAS FOWLKES, M.D., after
having been duly sworn, was examined and
testified as follows:

EXAMINATION

BY MS. PROBST:

Q. Can you state your name for the
record?

A. Thomas Fowlkes.

Q. Are you a doctor?

A. I am.

Q. Can I call you Dr. Fowlkes or
Fowlkes?

A. You can. You can call me
Dr. Fowlkes, Tom or whatever you would like
or just doctor. Just doctor.

Q. My father-in-law is a doctor and
I went ten years calling him doctor and one
day he asked me to call him Steve. It's a
habit of mine.

Prior to starting your
deposition I want to hand you a document that

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1 I've previously or just now marked as Exhibit
2 1, which I believe to be a report you
3 prepared. If you could review it and let me
4 know what it is.

5 A. This is a copy of my Rule 26
6 report in this case along with my CV, case
7 list and fee schedule.

8 Q. Can you give me your current
9 business address that you use?

10 A. Post Office Box 1955, Oxford,
11 Mississippi.

12 Q. I did you come here from
13 Mississippi today?

14 A. Not today. Yesterday.

15 Q. Okay. Who is your current
16 employer?

17 A. I have -- I am a self-employed
18 physician. I have three jobs. I'm a
19 self-employed physician. I'm an employee of
20 Fayette County, Mississippi and employee of
21 American Addiction Centers.

22 Q. You indicate yourself employed
23 as a physician. Do you have a company that
24 you've created to employ yourself as a

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1 physician or are you a sole --

2 A. Thomas Fowlkes, M.D., PA.

3 Q. Where is that incorporated?

4 A. Mississippi.

5 Q. You indicate you're an employee
6 of Lafayette County. What's your job title?

7 A. Medical director of the
8 detention center.

9 Q. The detention center in
10 Lafayette County?

11 A. That is correct.

12 Q. And as an employee of American
13 Addiction Center, what is your job there?

14 A. I'm an addiction physician and
15 director of professional and medical
16 relations for the Oxford Treatment Center
17 location. That's a nationwide company.

18 Q. With respect to your employment
19 for Thomas Fowlkes, M.D. PA, what type of
20 work do you do?

21 A. Number one, I'm board certified
22 in emergency medicine. So, on occasion,
23 emergency physicians may work sporadically or
24 locum tenens kind of work. Do I -- if I do

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1 that, I do it through my professional
2 association.

3 In addition to that, I do expert
4 witness and litigation support practice. And
5 until earlier this year, I had a medical
6 clinic operating through that professional
7 association.

8 Q. Who was?

9 A. Thomas Fowlkes Medical Clinic.
10 Very creative marketing.

11 Q. Was that located in Mississippi?

12 A. Yes. Oxford, Mississippi.

13 Q. Why did you stop doing that?

14 A. I have two -- I had two nurse
15 practitioners that worked with me. It was a
16 cash-based practice for uninsured patients.
17 I was the \$40 doctor of town. So, the two --
18 I turned it over to the two nurse
19 practitioners. They were doing the bulk of
20 the provision of services for the last year
21 or so. So, I turned it over to them, because
22 they wanted to accept Medicaid, et cetera.

23 Q. With respect to your job as an
24 employee of Lafayette County, that being the

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1 medical director of the detention center for
2 Lafayette County, how long have you held that
3 position?

4 A. I've been the medical director
5 of the jail for 20 years.

6 Q. Is it a jail or is it a prison?

7 A. It is a jail and detention
8 center. Those are synonymous terms.

9 Q. How many prisoners does it have?

10 A. We have approximately 160 beds.
11 That's our normal census. Right now probably
12 more like 140.

13 Q. How many hours a week do you
14 spend working there?

15 A. It depends how you calculate it.
16 I'm on call 24 hours a day, seven days a
17 week. So, I guess 168.

18 Q. How many hours do you spend
19 actually at the facility?

20 A. It varies from week to week.

21 Q. Are there any other doctors on
22 staff?

23 A. Physicians, no.

24 Q. Is there only one location for

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1 which you're responsible? Are there any
2 nurses on staff?

3 A. There are.

4 Q. What type?

5 A. I have a nurse practitioner.
6 So, mid level provider.

7 I have a registered nurse and I
8 have an L.P.N.

9 Q. Do you know the difference
10 between the scopes of practice for those
11 three particular nurses?

12 A. I do.

13 Q. And do you know if the scopes of
14 practice for those three particular nurses,
15 do you know what their scopes of practice are
16 in the State of Ohio?

17 A. I'm generally familiar with
18 other states. Certainly not -- every state
19 has a different nursing practice act with
20 slightly different language.

21 Q. As you know the differences in
22 their scopes of practice, what do you believe
23 the differences to be? Nurse practitioner,
24 begin with her.

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1 A. So, a nurse practitioner has an
2 advanced level of training. They had to have
3 been a registered nurse before. They have to
4 go to nurse practitioner school, which is at
5 least a masters program. Many of them are
6 now doctorate level programs. And they learn
7 diagnosis and more about pharmacology so they
8 are able to diagnose conditions, prescribe
9 medications and order testing, independently
10 of -- not necessarily independently. Depends
11 on the state. Some states they are operating
12 under the collaboration of a physician. Some
13 states actually they can practice completely
14 independently now. But they can order
15 medications in and diagnostic testing.

16 Q. What about an RN, scope of
17 practice?

18 A. Okay. An RN is a registered
19 nurse. So, they have completed a program
20 specific for registered nurses. They are not
21 able to practice independently. So, in other
22 words they cannot prescribe medications or
23 order testing independently.

24 They can follow protocols and

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1 orders of doctors, carry out nursing, DD's
2 nursing plans.

3 One of things that they are
4 usually able to do in most states that
5 L.P.N.s are not is administer IVs or IV
6 medications. Quite often L.P.N.s cannot.

7 And there are often nursing
8 and/or insurance requirements that only a
9 registered nurse provide a written nursing
10 plan of care.

11 That varies from state to state,
12 but often an insurance company or hospital
13 will say that the nursing plan of care has to
14 be written by a registered nurse. And there
15 was one more that I was about to tell you.
16 Just a moment.

17 Q. That's fine. We started early.
18 Take your time.

19 A. I can't think of it right now.
20 Maybe it will come to me in a minute. They
21 can usually supervise other nurses including
22 L.P.N.s.

23 An L.P.N. has been to a program
24 specifically for a licensed practical or in

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1 some states it's called licensed vocational
2 nursing and that is more a vocational program
3 or associates program. And they are, in
4 general, allowed to perform the same
5 activities, I told you they couldn't usually
6 do IV medications unless they are
7 specifically trained.

8 The nursing practice acts of
9 most states say they cannot supervise a
10 registered nurse.

11 Q. Do you know if the nurses --
12 nursing -- do you know if -- I'm getting your
13 language and mine confused.

14 Do you know if the State of
15 Ohio's statutes prevents or prohibits an
16 L.P.N. from creating a nursing plan of care?

17 A. You reference some particular
18 nursing plan of care. That may well be what
19 my reference before that a written plan of
20 care may well be required in the Ohio nursing
21 practice. That could be written by a nurse.

22 A plan of care -- but a -- a
23 nonwritten plan of care or planning and
24 delivering doctors' orders, et cetera, they

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1 certainly can do.

2 Q. Do you know if the State of Ohio
3 prohibits an L.P.N. from making an initial
4 assessment?

5 A. I believe it does not prohibit
6 them from making an initial assessment.

7 Are you talking about
8 specifically in a correctional setting?

9 Q. I'm talking about anywhere.

10 A. No, I don't believe they are
11 prohibited from making an initial assessment.

12 Q. Do you know if an L.P.N. is
13 prohibited from diagnosing a patient?

14 A. Nurses in general are not able
15 to diagnose patients. Neither L.P.N.s nor
16 RNs are trained to diagnose but rather only
17 to assess, independently of other providers.

18 Q. Would you agree that an L.P.N.
19 cannot prescribe medication?

20 A. Yes.

21 Q. Would you agree that an L.P.N.
22 cannot make a determination as to whether or
23 not certain already prescribed medications
24 should not be given?

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1 A. I would not agree with that. I
2 would not agree with that.

3 Q. On that particular point, is it
4 your position then that an L.P.N. is able to
5 determine whether or not an individual, who
6 they are assessing, should continue the
7 prescription that they have been given by a
8 physician?

9 A. So, as -- in this case
10 specifically, if an L.P.N. were acting upon
11 the direction of a physician, not to
12 prescribe narcotic -- not to dispense
13 narcotic medications, or if there is a policy
14 of the medical director that says we do not
15 prescribe or dispense chronic narcotics here,
16 the L.P.N. would be expected to follow that
17 directive of the physician.

18 Q. And do you know -- we're getting
19 into the facts a little bit, which I didn't
20 want to do yet, but I'm going to ask you.

21 Do you know if the specific
22 medical policy at the Delaware County jail
23 prohibited the dispensation of all narcotic
24 medications?

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1 A. Well, the written policies and
2 procedures of the Delaware County jail don't
3 contain the practice and the general practice
4 or the medical decision-making of the
5 responsible physician.

6 So, you would not expect a set
7 of policies and procedures to outline all of
8 the specific practice patterns of and
9 requests of the medical director.

10 So, no. So the answer to your
11 question is no, I don't believe it prohibited
12 that.

13 Q. Do you know if the policies and
14 procedures of correctional healthcare,
15 incorporated, prohibited the dispensation of
16 all narcotic medications in the particular
17 Delaware County jail facility?

18 A. It is my understanding that that
19 was a position or site specific thing, not a
20 company-wide policy.

21 Q. Other than narcotic
22 medications -- I want to ask my question
23 again.

24 Does -- can an L.P.N. determine

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1 whether or not an individual should --
2 withdrawn.

3 Can an L.P.N. determine whether
4 or not an individual should not continue
5 certain prescriptions given by a physician?

6 A. Yes.

7 Q. Do you know what prescriptions
8 Miss Filichia was taking at the time she was
9 admitted to the Delaware County jail on
10 February 20th, 2016?

11 A. Yes.

12 Q. What were those?

13 A. Before I answer that, when I
14 answered yes to, can a licensed practical
15 nurse decide to not essentially you asked me
16 a question of does a licensed practical nurse
17 have the ability to decide not to give a
18 medicine prescribed by a physician.

19 Q. Yes.

20 A. I answered yes. I was expecting
21 a follow-up from you about why is that so.
22 You didn't give that to me.

23 Q. No, I didn't.

24 A. May I explain my answer?

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1 Q. Sure.

2 A. An L.P.N. can look at a
3 medication and can make a determination that
4 the medication that they have wasn't
5 prescribed to them, was prescribed five years
6 ago and is not a valid prescription.

7 They can also look at the
8 medication and discuss it with the physician
9 and decide in conjunction with the physician
10 whether it's going to be given or not.

11 So, certainly it happens many
12 times that nurses, in conjunction with the
13 physician, decide whether or not medications
14 are going to be continued. And sometimes the
15 nurse herself can decide I don't even need to
16 ask the physician about this ten-year-old
17 prescription.

18 Certainly there are times when
19 an L.P.N. can decide that this is not a valid
20 prescription or, you know, that this is
21 not -- there's something not valid about it.
22 There's a different medication in the bottle,
23 et cetera, or if they have any doubts, they
24 can discuss it with the physician.

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1 Q. Okay. Let's limit the question
2 then. I'm going to reask it. I appreciate
3 your answer.

4 A. Okay.

5 Q. So, can an L.P.N. determine that
6 a patient should not be given a valid
7 prescription from a doctor on her own?

8 A. What's your definition of valid?

9 Q. Not expired.

10 A. Okay.

11 Q. One that they've been taking up
12 to the minute they see the L.P.N.?

13 A. So, the L.P.N. can discuss that
14 with the physician and in conjunction with
15 the physician can decide whether or not that
16 medication will be continued in the jail.

17 Q. But it's accurate to say that
18 the L.P.N. on her own, without talking to a
19 physician, cannot determine that a valid or
20 current, if you will, prescription being
21 taken by an inmate should be discontinued?

22 A. Would you read the question
23 back, please?

24

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1 (Whereupon, the following
2 portion of the record was read by the court
3 reporter:

4 "QUESTION: But it's accurate to
5 say that the L.P.N. on her own, without
6 talking to a physician, cannot determine that
7 a valid or current, if you will, prescription
8 being taken by an inmate should be
9 discontinued?")

10 - - -

11 THE WITNESS: It would depend on
12 a number of factors, including directions
13 that they have from the physician. So,
14 orders that they've gotten from their
15 supervising physician. And it may well be
16 that many medications are not started, the
17 L.P.N. makes a determination not to start
18 them at the time of admission, but to have
19 the physician review them when they come in
20 later.

21 It is quite routine for nurses
22 to decide not to continue a medication that
23 could -- that could be against the
24 physician's wishes or either is not an urgent

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1 medication.

2 As an example, in my jail, I
3 don't allow the prescribing of Tylenol
4 because I don't want to have a concern about
5 Tylenol being in my jail and there being
6 Tylenol doses. My nurses know that it's my
7 wishes for them not to continue Tylenol.

8 If they believe there's a reason
9 why they need to, they'll put the medication
10 up and ask me about it.

11 There's many circumstances when
12 nurses decide I should not continue this
13 medication.

14 Q. What is an urgent medication?
15 What would qualify as an urgent medication?

16 A. One that needs to be -- one that
17 shouldn't be discontinued for a few days.

18 Q. Would antibiotics qualify as
19 urgent medications?

20 A. It would entirely depend on
21 whether the antibiotics were -- what the
22 circumstances were, what they were given for,
23 what length of time, et cetera.

24 Such as -- do you want me to

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1 talk about the specifics of this case?

2 Q. No. We'll get to it. I'm just
3 kind of doing some general right now.

4 A. Okay. It depends on a time
5 frame. Antibiotics are given for a
6 particular time frame. So, often for
7 instance a dentist will give you antibiotics
8 for five days, after you had a tooth
9 extracted.

10 We often have inmates that come
11 in three months later with a sack of
12 medications that includes the five days still
13 in the bottle because they never took them
14 and my nurses should not start them because
15 it's not -- even though the prescription is
16 not expired for a year, they had their tooth
17 removed three months ago.

18 It would be inappropriate for
19 the nurse to just give them antibiotics that
20 a dentist had given them three months ago and
21 told them to take over five days. That's
22 inappropriate and the nurses ought to know
23 that.

24 Q. So the timing of the

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1 prescription is a factor in determine whether
2 a medication is urgent?

3 A. Certainly.

4 Q. Is the type of infection --
5 withdrawn.

6 If the medication is an
7 antibiotic, is the type of infection a
8 consideration in determining whether the
9 medication is urgent?

10 A. Whether urgent or not, that's
11 not up to the nurse to decide.

12 So, about the urgency of the
13 condition or -- the appropriateness of the
14 prescription. So, in other words, the time
15 frame, whether it's the right medication,
16 that's something that the nurse should be
17 able to decide.

18 But I wouldn't expect a nurse to
19 decide about the diagnosis for which it was
20 prescribed, necessarily.

21 I should add I wouldn't expect
22 her to decide that without getting additional
23 information so she could do things other than
24 talk to the physician. She could look at the

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1 medical records that she had or request
2 medical records or request pharmacy
3 verifications, which often happen.

4 Q. Or that an inmate may bring with
5 them?

6 A. Yes.

7 Q. Is your educational background
8 contained in your expert report complete?

9 A. Is my educational background
10 complete and contained in my CV?

11 Q. Yes.

12 A. Yes.

13 Q. During your education at the
14 University of Pittsburgh in emergency
15 medicine, did you undertake any courses in or
16 did you have any education in forensic
17 science?

18 A. You'll have to tell me what you
19 mean by that.

20 Q. Did you ever act as a coroner
21 during your residency at the University of
22 Pittsburgh?

23 A. Not during my residency.

24 Q. Did you ever act as a coroner at

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1 any time?

2 A. Not as the coroner; the
3 assistant medical examiner.

4 Q. Assistant medical examiner?

5 A. Yes.

6 Q. When was that?

7 A. From approximately 2000, 2007 in
8 Fayette County, Mississippi.

9 Q. What are the duties of an
10 assistant medical examiner?

11 A. To rule on the cause and manner
12 of death to cases which one is assigned.

13 Q. Approximately annually as an
14 assistant medical examiner, how many causes
15 of death did you opine upon?

16 A. I would say in the several
17 dozens.

18 Q. Regular dozens or baker's
19 dozens? I'm just kidding.

20 All right. During your time as
21 an assistant medical examiner, did ever have
22 another physician disagree with your ruling
23 on the cause or manner of death?

24 A. Not that I'm aware of.

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1 Q. Did you ever offer testimony
2 regarding your cause of death -- withdrawn.

3 Did you ever offer testimony as
4 an assistant medical examiner in a court of
5 law regarding the cause of death?

6 A. Yes.

7 Q. Was this in criminal
8 proceedings?

9 A. Both.

10 Q. Criminally and civil?

11 A. Yes.

12 Q. And in any of those proceedings,
13 was the determination of the cause of death
14 made by you as an assistant medical examiner
15 found to be inaccurate?

16 A. Not that I'm aware of.

17 Q. What types of things does a
18 medical examiner review in order to determine
19 a cause of death?

20 A. Okay. So, the medical -- the
21 circumstances surrounding the death. So,
22 there would be police reports, there would be
23 investigative summaries, there would be the
24 investigation of the scene itself, and

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1 examination of the body itself, the medical
2 records. Then quite often some type of
3 testing would be ordered; such as
4 toxicological testing and/or an autopsy.

5 Those findings, if ordered, you
6 would have the results back before one ruled
7 on the cause and manner of death.

8 Q. With respect to medical records,
9 do you mean historical medical records of the
10 decedent?

11 A. That is correct.

12 Q. And why are those important?
13 Withdrawn. You didn't say important.

14 Why are those used?

15 A. They are important to tell about
16 the person's past medical history and that
17 gives one's clues as to medications they are
18 taking, medications they are not taking,
19 surgeries that they've had, conditions that
20 they've had and the like.

21 Q. I know you've indicated in your
22 CV and during your testimony already that you
23 are the director, medical director for a
24 detention center in Lafayette County.

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1 So, prior to becoming the
2 medical director of the detention center of
3 Lafayette County, did you take any courses
4 provided by the National Commission on
5 Correctional Healthcare?

6 A. Prior to my -- no. The answer
7 is no.

8 Q. Did you take any after you
9 became the director?

10 A. Your question, if I understood
11 it, was did I take courses offered by the --
12 ask your question again.

13 Q. Did you take any courses offered
14 by the National Commission on Correctional
15 Healthcare?

16 A. I don't believe the National
17 Commission -- I don't believe the National
18 Commission on Correctional Healthcare offers
19 courses.

20 Q. Did you attend any seminars?

21 A. Yes.

22 Q. Thank you. I kind of meant
23 both, but I appreciate the difference.

24 With respect to seminars given

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1 by the National Commission on Correctional
2 healthcare, do you recall the last one you
3 attended?

4 A. Yes.

5 Q. When was that?

6 A. In April of this year. If I may
7 also expand, they offer not only seminars,
8 but they also offer certifications. They
9 offer seminars on accreditation standards and
10 they offer certifications for professionals
11 who are working in a correctional healthcare
12 environment.

13 Q. Do you have any of those
14 certifications?

15 A. I do.

16 Q. And those are listed in your --
17 in Exhibit A under your CV? Is that correct?

18 A. Actually, that is the -- I have
19 my updated CV.

20 Q. Thank you.

21 A. On my updated CV you will see
22 under certifications, on the one that's with
23 my report I was a certified correctional
24 healthcare professional. Now it says

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1 certified correctional healthcare physician.

2 There are certain levels of certification one
3 can get.

4 Q. Is this the only correction from
5 professional to physician?

6 A. That's not a correction.

7 Q. I didn't mean correction. I
8 meant change.

9 A. There may be additional
10 lectures. I normally provide an updated
11 lecture list. There may be updated lectures.
12 There's no other substantial changes that I'm
13 aware of.

14 I've received now the CCHP dash
15 physician certification and at the time this
16 report was submitted, I had only CCHP basic.

17 Q. We'll go ahead and mark this for
18 the record just so that we have it.

19

20 (Deposition Exhibit No. 1,
21 Expert Report, was marked for
22 identification.)

23

24 (Deposition Exhibit No. 2,

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1 Curriculum Vitae, was marked for
2 identification.)

3 - - -

4 BY MS. PROBST:

5 Q. I've marked what you've provided
6 to me as Exhibit 2 as an updated curriculum
7 vitae. Is that a correct copy of what you
8 gave me?

9 A. Yes. It also has -- you also
10 have in there my updated case list, which you
11 can mark as part of that exhibit.

12 Q. It's all included.

13 A. It's a CV and case list.

14 Q. Okay. Have you ever written any
15 articles published by the National Commission
16 on Correctional Healthcare?

17 A. No.

18 Q. Have you ever written any
19 articles on correctional healthcare?

20 A. No.

21 Q. Did you review the standards for
22 health services and jails published by the
23 National Commission on Correctional
24 Healthcare in the provision of the opinion

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1 we've marked as Exhibit 1?

2 A. I did.

3 Q. Do you have any specific
4 recollection of which sections of that
5 particular book you reviewed in creating
6 Exhibit 1?

7 A. No. I have the -- I have the
8 book in PDF format and I often review
9 multiple sections when I'm reviewing a case.

10 Q. Did you make any specific
11 citation in your report to any specific
12 provision of the standards for health
13 services in jails?

14 A. Not that I recall.

15 Q. Did you review any other book
16 regarding correctional healthcare or medical
17 services in the provision of your report,
18 Exhibit 1?

19 A. No.

20 Q. I believe you indicated in your
21 updated Exhibit 2, there's a list of cases
22 that has also been updated.

23 And by list of cases, do you
24 mean cases in which you have testified as an

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1 expert witness?

2 A. Yes. My federal case list of
3 testimony in the last four years.

4 Q. Have any of those cases been in
5 the State of Ohio? You can look at it. It's
6 not a memory test.

7 A. Not to the best of my knowledge.

8 The reason I'm having to look
9 has to do with submission of reports are not
10 included. Only sworn testimony and I believe
11 any other Ohio cases, only involve reports,
12 not sworn testimony.

13 Q. Using the list you've provided
14 in Exhibit 2, starting with Angela Anderson,
15 et al. versus Marshall County MS and
16 BMH-DeSoto Hospital, did that case involve a
17 detention center?

18 A. Yes.

19 Q. What was the name of the
20 detention center?

21 A. Marshall County Jail.

22 Q. And do you have any recollection
23 of the circumstances surrounding that case?

24 A. Not specifically. I recall it

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1 was a death in custody of a psychiatric
2 inmate. Psychiatric detainee, I should say.
3 A civil detainee.

4 Q. State of Mississippi versus Sean
5 Hunt. Do you have any recollection of
6 whether that involved the death at a jail?

7 A. No. I do. I do recall and it
8 did not.

9 Q. Why don't you look at the list
10 and tell me which ones involved death in a
11 jail. Make it easier.

12 A. Okay. These four.

13 Q. Oh, those four. Thank you.

14 Okay. Let's start with Lee
15 versus Jackson County, Mississippi.

16 A. Yes.

17 Q. What jail was at issue in that
18 case?

19 A. Jackson County Detention Center.

20 Q. What was the allegation if you
21 recall?

22 A. A death in custody allegation of
23 inadequate medical care and deliberate
24 indifference.

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1 Q. With respect to Pallen versus
2 Titlebaum?

3 A. That was not a jail case. That
4 was not a jail case.

5 Q. How about Boss versus Wexford?

6 A. Yes.

7 Q. What happened in that case?

8 A. That is a jail death.

9 Q. And what was the allegation?

10 A. Inadequate medical care.
11 Inadequate medical care and deliberate
12 indifference.

13 Q. And did it involve a nurse or a
14 doctor?

15 A. I believe multiple different
16 healthcare providers.

17 Q. With respect to the first one,
18 Lee versus Jackson County, did that involve
19 nursing care or doctor care?

20 A. Both.

21 Q. Singleton versus Southern Health
22 Partners. Is that a jail case?

23 A. Yes.

24 Q. What were the circumstances

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1 surrounding that case?

2 A. Death in custody. Alleging
3 inadequate medical care.

4 Q. Did that involve nursing care or
5 doctor care?

6 A. Both.

7 Q. In those cases that we've
8 discussed with respect to a death in custody,
9 what were you -- were you retained by the
10 same law firm that you've been retained for
11 for today's case?

12 A. No.

13 Q. Were you retained by the same
14 client?

15 A. No.

16 Q. Meaning Correctional Healthcare
17 Company?

18 A. No.

19 Q. Were there any motions made to
20 exclude your testimony in any of those cases?

21 A. Not to the best of my knowledge.

22 Q. And were you compensated for
23 your testimony in those cases?

24 A. Yes.

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1 Q. All right. What date were you
2 retained in this case, sir?

3 A. I don't recall an exact date,
4 but it was earlier this year.

5 Q. 2017?

6 A. Yes.

7 Q. And who made the initial contact
8 to you, sir?

9 A. Someone from Schumacher's
10 office.

11 Q. And your compensation
12 arrangements are contained in Exhibit 1?

13 A. Yes.

14 Q. And what was your understanding
15 of the assignment?

16 A. That is outlined in the first
17 full paragraph of my report, the scope of
18 report. That was my assignment; to opine
19 upon those items there.

20 Q. So, when you say the scope of
21 the report in paragraph numbered I, scope of
22 report --

23 A. Yes. Roman Numeral I.

24 Q. Yeah. Page 1. It says the

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1 appropriateness of medical care provided Miss
2 Rhianna Filichia while she was incarcerated
3 at the Delaware County Ohio jail in January
4 and February of 2016.

5 Two, Roman Numeral II, how Miss
6 Filichia's chronic and ongoing medical
7 conditions may have played a role in her
8 symptoms, treatment and ultimately her death.

9 And then three: Whether the
10 policies and procedures in place regarding
11 medical care at the Delaware County jail are
12 responsible and appropriate.

13 MR. SCHUMACHER: Reasonable.

14 THE WITNESS: Reasonable.

15 MS. PROBST: Mine says
16 appropriate.

17 MR. SCHUMACHER: Reasonable.

18 THE WITNESS: You said
19 responsible.

20 BY MS. PROBST:

21 Q. I apologize. Are reasonable and
22 appropriate.

23 My opinion is limited to those I
24 can offer to a reasonable degree of medical

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1 probability or likelihood.

2 Are those the three assignments
3 you were given?

4 A. Yes, to review the records and
5 opine upon those three directives -- those
6 three areas.

7 Q. With respect to the records you
8 reviewed, what records did you review?

9 A. A list that I reviewed at the
10 time that I've submitted this report are
11 contained --

12 Q. Page 12?

13 A. -- within 12 and 13.

14 Q. Okay.

15 A. And a list of records I've
16 reviewed since the time of my report are
17 contained on this sheet.

18 Q. Okay. Hold on one second. Can
19 I have this?

20 - - -

21 (Deposition Exhibit No. 3,
22 Handwritten Record, was marked for
23 identification.)

24 - - -

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1 BY MS. PROBST:

2 Q. I'm handing you a document I've
3 marked as Exhibit 3. You indicated that in
4 addition to the materials that are referenced
5 beginning on Page 12 of your expert report
6 which we've marked as Exhibit 1, that you
7 reviewed additional materials which I've
8 marked as Exhibit 3 and set in front of you.

9 Do you see that?

10 A. I do.

11 Q. Did you compile this list?

12 A. I did.

13 Q. Is this your handwriting?

14 A. It is.

15 Q. On Number F, you indicate on
16 Exhibit 3, Detective Overly's video narrative
17 summary, 2/20 to 2/21 of 2016.

18 Did you see that?

19 A. Yes.

20 Q. Did you actually watch the
21 videos?

22 A. I have not yet.

23 Q. Do you have them?

24 A. They have arrived at my office

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1 since I have left.

2 MR. SCHUMACHER: All 70 hours.

3 MS. PROBST: It's time
4 consuming.

5 BY MS. PROBST:

6 Q. With reference to Detective
7 Overly's video narrative summary from 2/20
8 and 2/21 of '16, do you recall -- and if you
9 don't, that's fine, it's not a memory test,
10 if Detective Overly included in his summary
11 whether or not Miss Filichia brought a bag of
12 medicine with her to the jail?

13 A. May I refer to that summary?

14 Q. Please. Sure. Go right ahead.

15 A. Yes, it does make reference to
16 that.

17 Q. Do you or have you ever seen or
18 reviewed a bag of medicine from Correctional
19 Healthcare Companies?

20 A. Have I personally seen a bag of
21 medicines? No, I have not.

22 Q. Have you ever seen any list
23 indicating what medicines Miss Filichia had
24 in that bag?

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1 A. I have seen the testimony or I
2 have seen that report on the video that there
3 was medications that -- a bag that contained
4 pills and that the correctional officers
5 looked at them. I've also seen some
6 deposition testimony that there were some
7 pills in that bag. But the specific list, I
8 did not see.

9 Q. Has anyone ever told you what
10 happened to that bag?

11 A. I have no information about
12 that.

13 Q. With respect to your job as the
14 medical director of a detention center, do
15 you have policies and procedures for your
16 detention center on what to do with
17 medications or pills, if you will, brought in
18 by potential detainees?

19 A. My policies and procedures are
20 similar to the Delaware County jail policies
21 and procedures.

22 Q. Do any of them call for
23 destruction of the medicine or pills?

24 A. Mine do, yes.

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1 Q. When?

2 A. After the person is no longer
3 there. Just I need to clarify.

4 Q. Sure. Please.

5 A. There's several different --
6 there's several different ways that
7 medications are handled.

8 Q. Uh-huh.

9 A. The Delaware County jail has a
10 way that was very similar to mine, which is
11 they often would make a list. It depends on
12 whether the person is going to be there short
13 term or long term. Often if a person going
14 to be there short term they would actually be
15 dispensed their medications that they had
16 brought in. And if they had the correct
17 medications and a valid prescription.

18 If not, they would be counted
19 and then locked up in a locked cabinet,
20 unless they were a controlled substance, in
21 which case, at least in my facility, we lock
22 them up in a separate narcotics cabinet. It
23 depends on whether the person is going to be
24 dispensed their medication, whether it's a

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1 controlled substance or not. Depends on
2 where it's housed.

3 Normally when a person leaves,
4 especially they come in, stay a day or two,
5 they leave, they would take their own
6 medications back with them or in the case of
7 say a weekender, the card would have been
8 made up, it would have been kept from weekend
9 to weekend and dispensed.

10 When the person is finally
11 discharged, normally they are given their
12 medications. That's their policy to give
13 them back their medications.

14 However, because people are
15 often in a very big rush to get out of jail
16 and usually when they open the door, the
17 person goes out immediately and leaves their
18 medications and so once -- on a periodic
19 basis, we go through, find out whose
20 medicines are still there, that the person is
21 not still there and destroy them.

22 Q. With respect to the opinion that
23 you've offered which we've marked as Exhibit
24 1, is this a sum total of all -- this written

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1 opinion -- does this written opinion contain
2 each and every opinion that you intend to
3 offer in this case?

4 A. No, it does not.

5 Q. And why not?

6 A. Well, number one, I have formed
7 a couple of supplemental opinions since I've
8 implemented this report.

9 Q. Okay.

10 A. Number two, it was designed to
11 be a summary of my main opinions and all of
12 the opinions that I am prepared to offer at
13 this time.

14 It's a summary of those but
15 certainly I may have other opinions based
16 upon other questions that you may ask me.

17 Q. Fair. What -- before we get to
18 the ones in there, can you identify the
19 supplemental opinions you've formed?

20 A. I can.

21 Q. Okay.

22 A. This page just listed as
23 additional opinions since the initial report.

24 Q. Uh-huh.

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1 A. But in addition to that, this is
2 the opinions I have with which I disagree
3 with Miss LaMarre. I don't know how to
4 pronounce her name. I apologize.

5 Q. Madeline LaMarre. It's probably
6 pronounced differently because I'm from
7 Indiana.

8 A. Sounds good.

9 Q. And the summary of the
10 differences of opinion I have with
11 Dr. Manokas? These are rebuttal reports that
12 you're offering today?

13 A. No.

14 Q. No?

15 A. I mean they are --

16 MR. SCHUMACHER: They are notes.

17 THE WITNESS: They are notes
18 that I made.

19 BY MS. PROBST:

20 Q. Okay. I appreciate that. Okay.

21 MS. PROBST: Off the record.

22 - - -

23 (Whereupon, there was a recess
24 commencing at 11:55 a.m. and concluding at

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1 12:09 p.m.)

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MS. PROBST: Let's start. All right. Dr. Fowlkes, you have provided me and I have marked and identified and sat in front of you, I've marked Exhibit 4, which is three pages in length, which is titled summary of point in Miss LaMarre's report with which I disagree.

10

11

12

13

And then Exhibit 5, which I have marked and it's titled summary of issues with Dr. Manokas' report.

14

15

16

17

(Deposition Exhibit No. 4, Handwritten Record, was marked for identification.)

18

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(Deposition Exhibit No. 5, Handwritten record, was marked for identification.)

22

BY MS. PROBST:

23

24

Q. Exhibit 6, additional opinions since initial report.

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- - -
(Deposition Exhibit No. 6,
Handwritten Record, was marked for
identification.)
- - -
BY MS. PROBST:
Q. Is that correct?
A. Yes.
Q. These are all documents you've
handwritten; is that correct?
A. That is correct.
Q. Now, looking at these three
documents and your original report, do they
contain all the opinions that you formed to
date?
A. They contain a summary of the
opinions that I've formed to date.
Q. All right. Flipping to Exhibit
1, Page 7.
A. Okay.
Q. All right. There is a bold word
titled opinions at the top page, beginning in
the second paragraph.
Do you see that?

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1 A. I do.

2 Q. Are all the statements made
3 following that bold line through Page 12 your
4 opinions in this case, in Exhibit 1?

5 A. Those are my opinions expressed
6 in that report, yes.

7 Q. Starting with the letter, Roman
8 numeral number one. The actions taken by the
9 employees of Correct Care Solutions in their
10 assessment and treatment of Ms. Filichia
11 during January and February, 2016, while she
12 was incarcerated at the Delaware County jail
13 were reasonable and within the acceptable
14 standard of care for healthcare within a
15 detention facility.

16 Do you see that?

17 A. I do.

18 Q. All right. Am I accurate in
19 stating, in that in forming this opinion, you
20 did not review the Ohio revised code
21 statutory section regarding L.P.N. scope of
22 practice?

23 A. I did not specifically review
24 the nursing practice act, that is correct, in



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1 that state. Although I am familiar with
2 states in general. I'm sorry. I should
3 rephrase.

4 I am familiar with the practice
5 acts in states generally.

6 Q. Is it accurate to state that at
7 the time of February 20 and 21st, there was
8 no medical staff on duty at the Delaware
9 County jail except licensed practical nurses?

10 A. No, I don't believe that's
11 correct.

12 Q. You believe there was -- you
13 believe there was another licensed medical
14 personnel at the Delaware County jail on
15 February 20th or 21st?

16 A. That wasn't your question.

17 Q. Okay. So, tell me why you
18 didn't agree with my first question.

19 A. You said on duty. Oh, there was
20 a responsible health authority, there was a
21 registered nurse who had -- who had
22 supervisory authority over what was going on,
23 or a person. I'm sorry, a person.

24 Q. Do you think there was a

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1 registered nurse on duty?

2 A. I believe that there was a
3 registered nurse employed by -- I'm going to
4 also use Correct Care Solutions
5 interchangeably with I believe --

6 Q. That's fine.

7 A. I believe that they had a
8 registered nurse who was charged with
9 supervisory responsibility over that facility
10 and, therefore, being on duty, she was maybe
11 not present physically.

12 What I disagreed with, same as
13 the physician, there was a physician on duty.

14 Q. That was a physician that could
15 be called. Is that correct?

16 A. That was responsible for the
17 care there and could be called 24 hours a
18 day, was there a supervisory nurse.

19 So, your term of on duty
20 confused me or not -- it didn't confuse me.
21 There were on duty. I'm on duty 24 hours a
22 day at my jail although I'm not physically
23 present there.

24 Q. Who gave you the name of any

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1 supervisory nurse that was not an L.P.N.?

2 A. In I believe it was Nurse
3 Bloomfield's deposition where she said that
4 there was responsible health authority that
5 was a registered nurse.

6 Q. Did you read the portion of her
7 testimony where she indicated that there had
8 never been a registered nurse in the facility
9 while she was employed there?

10 MR. DOWNEY: Objection. I think
11 misstates the record.

12 THE WITNESS: No, I did not read
13 something that said that. I read that she
14 said that the -- nursing director or the --
15 I'm not sure if she said acting or nursing.
16 Her direct supervisor was another L.P.N. I
17 believe that she was -- I believe that she
18 said that there was a registered nurse that
19 worked for Correct Care Solutions who was
20 their supervisor.

21 Q. Do you recall Ms. Bloomfield
22 indicating that between February 20th or 21st
23 that anyone at the Delaware County jail ever
24 made a call to that registered nurse in that

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1 two-day period regarding Ms. Filichia?

2 A. In that two-day period, no, I do
3 not believe they did.

4 Q. Did you see any notes in
5 Ms. Filichia's medical record, which
6 according to Exhibit 1, you reviewed,
7 indicating that anyone at the Delaware
8 County jail ever contacted -- withdrawn.

9 Did anyone with Corrective
10 Healthcare Solutions ever contacted anyone at
11 any registered nurse with respect to Miss
12 Filichia?

13 A. A physician, but not a
14 registered nurse.

15 Q. I know. I'm asking about a
16 registered nurse. There was no calls made in
17 any of the medical records for any consult
18 with any registered nurse; is that correct?

19 A. I don't believe there was any
20 reason to do that and I didn't see any
21 evidence that anybody did that.

22 Q. Let's talk about Dr. Betty
23 Mitchell. Who is Dr. Betty Mitchell?

24 A. It's my understanding she's the

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1 responsible physician for that facility.

2 Q. Other than the deposition of
3 Nurse Bloomfield, did you find any evidence
4 in the record that Dr. Betty Mitchell was
5 contacted for any other reason other than to
6 approve a Senna laxative on February 20th of
7 2016?

8 MR. DOWNEY: Objection.

9 BY MS. PROBST:

10 Q. February 20th, 2016.

11 A. Some of Dr. Mitchell's prior
12 orders were still in effect at that time.
13 But with regards to Dr. Mitchell and the
14 phone call that occurred, I was trying to
15 give you this.

16 So she was contacted and as a
17 result of that phone contact, we see that an
18 order was given for the Senna laxative and I
19 don't know whether it was discussed with her
20 at that time.

21 But the medicine was also
22 continued that she had previously ordered.

23 Q. Looking at that same page, could
24 you flip back, please. Could you please read

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1 the Bates stamp page on the bottom into the
2 record?

3 A. CCS 000009.

4 Q. Are there any indication on that
5 page, Dr. Fowlkes, on that particular page,
6 who contacted the doctor to obtain a
7 telephone order for Senna?

8 A. The person who wrote the order,
9 so, no, it does not say who contacted
10 Dr. Mitchell.

11 Q. And -- go ahead. I didn't mean
12 to interrupt you. Go ahead.

13 A. No.

14 Q. Thank you.

15 MR. SCHUMACHER: There is a
16 signature there. Whether you can read it or
17 not --

18 THE WITNESS: That's what I was
19 going to say. There's a signature of someone
20 who recorded the order who spoke to the
21 physician. There is no -- there's no record
22 there who spoke to the physician.

23 BY MS. PROBST:

24 Q. There's no record that anyone

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1 spoke to a physician; isn't that true?

2 A. No, that's not true.

3 Q. Other than that telephone order,
4 there is no order or note that anyone spoke
5 to a physician?

6 A. Okay. Other than this. On this
7 sheet of paper, yes, that is correct.

8 Q. All right. Now, with respect
9 to -- have you ever reviewed the March 3rd,
10 2016 nurse's note from Miss Bloomfield which
11 was created 11 days after Miss Filichia died?

12 A. I have.

13 Q. In reviewing that particular
14 note, is there any indication in that note
15 that Miss Bloomfield contacted Dr. Mitchell
16 via telephone at any time?

17 A. Give me a minute.

18 Q. Sure.

19 A. It does not say that.

20 Q. Thank you. Paragraph 1. Under
21 Roman Numeral I, Page 7, Exhibit 1. It
22 starts, During the weekend prior to February
23 20th, 2016, the nursing staff reviewed and
24 verified the medications Miss Filichia was

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1 taking and continued the necessary
2 medications.

3 Do you see that?

4 A. I do.

5 Q. When you say reviewed and
6 verified the medications Miss Filichia was
7 taking, where did you obtain that statement?

8 A. Okay. So, it says in the
9 weekend prior to that -- we'll go right
10 here -- this was -- this page right here has
11 an example. So, 1/8, that's a verification
12 of medications.

13 What this piece of paper says
14 that is that the patient, this is created on
15 1/8. This is CCS 000022.

16 Q. Uh-huh.

17 A. Okay. So, the patient reported
18 that she was on Metronidazole or Flagyl, 500,
19 twice a day for seven days; Gabapentin, 300
20 milligrams, three to four times daily;
21 Zanaflex, it's Tizanidine, but Zanaflex
22 muscle relaxer at nighttime; Cetirizine or
23 Zyrtec daily and Cheratussin, which is a
24 cough syrup daily.

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1 So then what the nurse did was
2 verify with the pharmacy. The pharmacy's
3 name is not on here but the prescribing
4 provider, they do verify those meds because
5 Dr. Alderman gave the first one, Dr. Stock
6 gave the last four.

7 Q. Do you see a sheet similar to
8 that for the medicine that Miss Filichia
9 brought in with her on February 20th, 2016 in
10 the brown bag referred to in Detective
11 Overly's report?

12 A. I wasn't done with my answer.

13 Q. I'm sorry. Go ahead.

14 A. What they did was they verified
15 and spoke with the doctor and decided
16 which -- it doesn't say they spoke with the
17 doctor, but they decided which meds were
18 going to be continued and which were not;
19 either they made that decision independently,
20 which I would not expect or they spoke with a
21 physician and Dr. Miller, I'm sorry,
22 Dr. Mitchell later cosigned. She agreed with
23 that. Whether she approved it at the time or
24 not, she ultimately agreed with those orders.

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1 That's what I mean by
2 verification and starting appropriate. They
3 didn't start some of them. They did not
4 start the Zyrtec, they did not start the
5 Zanaflex and because of my hole punch, I
6 think they did not start the Cheratussin.
7 They did start the top two.

8 Q. Uh-huh.

9 A. That's my answer to that
10 question.

11 Q. Thank you. I did not mean to
12 interrupt you.

13 A. That's all right. Your next
14 question was did I see a similar sheet. I
15 would not expect a similar sheet because this
16 was considered one incarceration starting
17 January 8th. So, they were for ten weekends,
18 she was what is called a weekender.

19 Q. Is it your testimony that if
20 Miss Filichia brought in a bag of pills with
21 her to the jail on February 20th, 2016, that
22 you would not expect a sheet indicating what
23 medicines she brought with her to the jail to
24 be completed by the nurse or medical staff on

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1 duty?

2 A. That is not my testimony.

3 Q. Okay.

4 A. My testimony is that I would
5 expect that it wouldn't be necessary to
6 repeat a sheet. I do believe it would be
7 incumbent on them, on the person who assessed
8 Miss Filichia when she came in, to look at
9 those medications and find out whether there
10 were changes or any other medicines that
11 should be made.

12 Q. Did you see any note in the
13 record that you've reviewed indicating that
14 those medications in that bag were reviewed
15 by any of the medical staff?

16 A. Yes. Nurse Bloomfield said that
17 it was -- said that -- I don't know whether
18 the Seneca was in there. Ms. Filichia
19 reported being on the Seneca and she said she
20 would see what she could do. I don't know
21 whether narcotics was in there, but Nurse
22 Bloomfield said it was a policy they weren't
23 going to continue the narcotics.

24 Q. Isn't it true that that

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1 information was actually in nursing note and
2 that was information that Miss Filichia
3 reported to Miss Bloomfield, not information
4 indicating that Miss Bloomfield went through
5 the bag of pills to review what was in the
6 bag and verified that it was all the same
7 prescription?

8 MR. DOWNEY: Objection. Form.

9 THE WITNESS: There was a --
10 there was a bag that was apparently visible,
11 as I told you before, I haven't reviewed it
12 myself, but there is the description that
13 there was a bag available that was brought
14 there at the time. It was presented to the
15 nurse. And so it would be my expectation
16 that that nurse reviewed that at some time.

17 But you're asking me, your
18 question was did -- was there a form that
19 showed which medicines were or weren't
20 continued or which medicines were even in
21 that bag and no, I do not see such a form.

22 Nor would I necessarily, I would
23 expect that the nurse would at least look
24 through them but whether there's another form

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1 or not, I can't say.

2 BY MS. PROBST:

3 Q. And why would you expect the
4 nurse to at least look through them?

5 A. Because there was a potential
6 change in her condition from when she was
7 last there. And she brought in a bag of
8 medications and some papers. Again, I don't
9 have those papers either, but there is a
10 description in there that there was paperwork
11 and there was a bag of medications that were
12 placed on the counter in the vicinity of the
13 nurse. And I would expect that that would be
14 a part of her review of the assessment of a
15 patient coming back for another weekend.

16 Q. What is the purpose of doing a
17 written assessment when an individual is
18 booked into a jail?

19 A. To create a medical record which
20 can then be referred to by other members of
21 the healthcare team later on or to provide a
22 record for other administrative purposes like
23 this.

24 Q. Did you see any written record

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1 of an initial assessment on February 20th of
2 2016?

3 A. Well, it is my recollection
4 that -- and what I first said in my report
5 was that it was my understanding that Correct
6 Care Solutions might be following a similar
7 policy to the Delaware County jail, which was
8 that they did not repeat paperwork each
9 subsequent weekend admission. That they were
10 considering it -- so, it was my understanding
11 from the Delaware County jail that they
12 considered a week -- a person serving weekend
13 time to be under one incarceration.

14 So, one booking. So, there was
15 one set of booking paperwork done. They
16 actually considered them to be in the custody
17 of Delaware County jail for that entire time
18 and they gave them a pass to be gone, not a
19 pass, but they were gone each week and came
20 back.

21 So, they did not repeat the
22 intake paperwork each weekend that they came
23 back.

24 MR. DOWNEY: Objection. Move to

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1 strike. Go ahead.

2 THE WITNESS: It was my
3 understanding that Correct Care Solutions
4 used a similar policy. Therefore, did not
5 create a new intake assessment form each time
6 when they came back.

7 In Ms. Bloomfield's deposition
8 testimony she said that she did and it was
9 lost.

10 BY MS. PROBST:

11 Q. I understand that. I've heard
12 that testimony.

13 A. Right.

14 Q. But in your review of the
15 written record, that's my question, did you
16 see a written initial assessment for February
17 20th, 2016?

18 A. I did not.

19 Q. Okay. And did you see or have
20 you seen any nurse's notebook that Miss
21 Bloomfield wrote in to record Miss Filichia's
22 responses or vital signs at the time she was
23 admitted into the Delaware County jail?

24 A. I've not seen that.

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1 Q. Did you -- you've never seen it.

2 That's what you just said. Thank you.

3 Did you see any notes in the
4 record that Ms. Bloomfield communicated to
5 any other nurse Miss Filichia's condition at
6 the time of her delivery to the Delaware
7 County jail on 2/20/2016?

8 A. The telephone order appearing
9 from someone indicates that another nurse was
10 involved. However, the specifics about her
11 communicating to anyone, I don't know, I'm
12 not exactly sure I follow your question. But
13 I do see that another nurse was involved
14 because another nurse is the one that records
15 the telephone order.

16 And then later or then in
17 Ms. Bloomfield's deposition testimony, she
18 states that another nurse was present and was
19 essentially precepting her, as I recall
20 correctly.

21 But more than that, I don't know
22 about communication. I'm not sure what you
23 mean about communication. There was more
24 than one nurse that was present in that

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1 facility. I do know that, yes.

2 Q. I'm just asking if you've
3 reviewed any written records that I've not
4 seen, indicating -- I want to know what
5 you've seen. Make sure what it is and if
6 you've seen a written note indicating X, Y or
7 Z, specifically, my question, that
8 Ms. Bloomfield wrote I communicated so and so
9 and if you've seen that, I want to know.

10 A. I did not see such a note.

11 Q. All right.

12 A. Nor would I expect to.

13 Q. Well, if there is no written
14 initial assessment and no record of
15 communication of the condition of an
16 individual who is brought into the jail,
17 based on your experience as the director of a
18 detention facility, how would individuals who
19 are taking care of Miss Filichia following
20 that nurse's shift be able to determine what
21 her condition was when she came in?

22 A. Well, when you said there was no
23 written assessment, there was a documentation
24 of that written assessment. It was entered

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1 as a late entry. And I did not have, prior
2 to Ms. Bloomfield's deposition testimony, any
3 idea why it wasn't in the record.

4 But there is a written note of
5 her assessment. It was entered as a late
6 entry.

7 Q. I understand there's a written
8 noted dated March 3rd. I'm asking you a
9 question, based on the actual records that we
10 have, indicating that there was no written
11 assessment done on February 20th.

12 And if there is no written
13 assessment done, based on your experience as
14 the director of a detention facility for 20
15 years, how would the condition of the
16 individual who -- of whom no written
17 assessment was made be communicated to nurses
18 following the end of the shift of the nurse
19 who was to do the initial assessment?

20 MR. SCHUMACHER: Let me just
21 object. I guess it's to form at this point.

22 If you are asking Dr. Fowlkes to
23 assume that Terry Bloomfield's deposition
24 testimony, notwithstanding that she did not

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1 create an initial note that was subsequently
2 lost from the chart, then give him that
3 assumption.

4 MS. PROBST: I'm -- first of
5 all, his report was written with what we all
6 have. That meaning that there was no written
7 assessment done.

8 Ms. Bloomfield's testimony that
9 it was -- so, that's the written record. I'm
10 asking him when that is the written record,
11 as it is in this case, how is the next shift
12 nurse supposed to become aware --

13 MR. SCHUMACHER: You wanted for
14 purposes of this question to ignore the
15 Bloomfield testimony, which illuminates what
16 was and what wasn't in the record?

17 MS. PROBST: What I would like
18 for everyone to realize is that
19 Ms. Bloomfield's -- if you're going to rely
20 on Ms. Bloomfield's testimony, fantastic.

21 So, Ms. Bloomfield indicates
22 that there was somehow a written assessment
23 that was lost. But she was able to recreate
24 it on March 3rd after Miss Filichia died.

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1 So, if her testimony -- let's
2 assume her testimony is false and there was
3 no written assessment. How would the next
4 nurse on duty become aware of Miss Filichia's
5 condition if no written assessment was
6 completed?

7 MR. DOWNEY: I'm going the
8 object to form.

9 MS. PROBST: Sure.

10 MR. DOWNEY: Go ahead.

11 THE WITNESS: Number one, to say
12 there wasn't a written assessment ever done
13 or is not in the record, I don't believe is
14 accurate because there was a late entry that
15 was made on March 3rd, that documents her
16 assessment.

17 It is also clear from -- I'm
18 taking your assumption, though, that there
19 was no other thing done.

20 What I can also see from the
21 record, from the description of the videotape
22 that occurred, that a deputy came in, they
23 asked for a nurse to do an assessment. A
24 nurse did do an assessment. A nurse saw her,

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1 spoke with her, presumably examined her, we
2 don't have that directly on the video, but
3 spoke with her and then went to the nursing
4 office and then medications were started as a
5 result of that and then after that, another
6 nurse came on duty.

7 So, to say that one would not be
8 able to know what happened is I don't believe
9 accurate.

10 Because clearly an assessment
11 was done. Whether a written report was
12 written at that time or not, an assessment
13 was clearly done, a decision was made about
14 what medications were or were not going to be
15 started.

16 And as usual protocol, one would
17 expect that the nurses had verbal
18 communications between shifts. So, that's
19 the way it normally works.

20 Q. Did you -- I believe you
21 indicated you didn't review any of the
22 videos. Is that right?

23 A. I have not yet had an
24 opportunity to review the 70 hours of videos.

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1 But my intention is to do that.

2 What I did instead was to review
3 the -- this video summary, which is some 13
4 pages long that tells what happened on that
5 video.

6 Q. Assuming that there's a video
7 that Nurse Lupu makes a statement, quote, I
8 had no idea she was up here, that's on us,
9 end quote.

10 Assuming that statement was made
11 in the video after Miss Filichia was
12 attempted resuscitation and taken to Grady
13 Memorial Hospital, does that assist you in
14 making a determination of whether or not
15 there was a written initial assessment ever
16 done?

17 A. No, it does not. You would have
18 to -- you would have to tell me exactly what
19 you mean, what's under -- what circumstances
20 that was written.

21 And that in and of itself
22 doesn't say much to me about what happened.

23 Q. That the nurse on duty had no
24 idea that Miss Filichia was up there doesn't

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1 say much about what was going on?

2 MR. DOWNEY: Object to form and
3 argumentative.

4 THE WITNESS: It does not assist
5 me in making an opinion about what happened
6 that weekend, no.

7 BY MS. PROBST:

8 Q. Your next statement on Paragraph
9 3, Page 8, is that Nurse Bloomfield evaluated
10 Miss Filichia in detail.

11 Is that based on the nurse's
12 note?

13 A. It is based upon the nurse's
14 note that was created, admittedly as a late
15 entry. So, in other words, that is a
16 detailed assessment that she documents on
17 March 3rd.

18 Q. Of 2016 after Miss Filichia was
19 deceased?

20 A. That is correct.

21 Q. And the -- withdrawn.

22 She reviewed her medication and
23 her requests for additional medications.
24 Again, she reviewed her medication. What do

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1 you mean by that?

2 A. What I mean is that, I said that
3 whole statement says her request for
4 additional medications beyond what was given
5 on previous weekends.

6 So, Miss Filichia was already on
7 three medications and so those were set up to
8 be continued on any subsequent weekends that
9 she came in.

10 So, she reviewed that. Either
11 she set them up, I don't know if the
12 medication cart was set up in advance or at
13 my facility, one would have to set up the
14 medicines each weekend. But in any event,
15 she reviewed those medications, decided that
16 the previous medications would be continued
17 and in addition to that, Miss Filichia asked
18 for a laxative, which she called Dr. Mitchell
19 and got an order for. And narcotic pain
20 medicines, which she did not receive.

21 Q. Your first statement that she
22 reviewed her medication as part of that
23 sentence, do you mean she reviewed the pills
24 that were in the brown bag?

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1 A. No.

2 Q. Okay. That's all I wanted to
3 make sure.

4 So you mean she reviewed the
5 medication that was in her chart previously
6 on the MARs?

7 A. I mean she reviewed those. I
8 mean that she reviewed what Miss Filichia
9 told her that she wanted, a laxative and
10 narcotic pain medications and possibly
11 reviewed the medications in the bag. I don't
12 know one way or another whether she did.

13 I know that the bag was present
14 and my presumption would be that she reviewed
15 them as part of her assessment.

16 But that being said, what you
17 asked me was what did I know she reviewed.
18 What I know she reviewed was the previous
19 medications that she continued.

20 I also know that she, according
21 to the note later written, that she reviewed
22 with Miss Filichia what Ms. Filichia says she
23 wanted and I also -- and she spoke with
24 Dr. Mitchell about which of those meds she

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1 would or wouldn't receive. And I know that
2 she was in the presence of a brown paper bag
3 which contained medications and may well have
4 reviewed those medications.

5 Q. How do you know that Nurse
6 Bloomfield spoke to Dr. Mitchell about what
7 medication, any medication, other than a
8 Senna laxative?

9 A. There's an order written for a
10 telephone order.

11 Q. I understand. For a Senna
12 laxative; correct?

13 A. Uh-huh.

14 Q. How do you know that
15 Ms. Bloomfield spoke to Dr. Mitchell about
16 any other medication other than a Senna
17 laxative?

18 A. Number one, I've not seen any
19 deposition testimony from Dr. Mitchell.

20 Q. Thank you.

21 A. Number two, in the deposition
22 testimony of Nurse Bloomfield, I believe that
23 she says she discussed the medications, but
24 we would have to go to that specific portion

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1 of her deposition to see exactly what it
2 says.

3 Q. If you review the 3/3/2016
4 nurse's note made after Miss Filichia died,
5 it indicates, does it not, that
6 Miss Bloomfield informed Miss Filichia
7 directly, without contacting Dr. Mitchell,
8 while still in the holding cell, that no
9 narcotics would be given and that a Senna
10 laxative would be ordered? Is that not
11 correct?

12 A. And she may well have told her
13 that narcotics would not be given. That
14 nurse writes that a Senna laxative could be
15 given, it can't be given by her without the
16 order of a physician, either by standing
17 order, protocol or telephone order or verbal
18 order.

19 Q. All right. In that nurse's
20 note, it does not indicate at any time that
21 Miss Bloomfield reviewed any medications that
22 Miss Filichia had previously been given
23 during her previous weekend visits; isn't
24 that right?

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1 A. It doesn't say in here that she
2 did. But what she does do is make sure that
3 the medications are administered. What I
4 mean is they are administered. She didn't
5 stop them. She quite likely had to reset up
6 the med cart because Miss Filichia had not
7 been there for the previous three weekends.
8 She had not shown, either they were on that
9 med cart the whole time and she didn't have
10 to do anything to restart it or they had been
11 stopped because she didn't show for three
12 weekends and they had to restart them. One
13 of the two.

14 Q. How do you know she's the one
15 that did that?

16 A. Some nurse did.

17 Q. Okay.

18 A. She is the intake nurse. She's
19 doing the assessment. So it would normally
20 be the intake nurse, the assessing nurse job
21 to see what medications are going to begin.

22 Q. I understand that's normally,
23 from your experience, what happens.

24 But do you know of anything in

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1 the record establishing that she's the one
2 that actually did that?

3 A. I know that one of the nurses
4 did.

5 Q. Okay.

6 A. It could be the nurse that
7 documented the telephone order as well
8 because she was also a relatively new
9 employee and she was being precepted so
10 probably some of the work was being done by
11 her and some of them by her precepting nurse.

12 Q. But the fact of the matter is we
13 don't have any actual record evidence that
14 Miss Bloomfield is the one that reviewed her
15 previous medications or restarted those
16 medications or made the order for the Senna
17 laxative; isn't that right?

18 A. What we do know is that a nurse
19 did it there. Some nurse on duty.

20 Q. Thank you. In the last sentence
21 of Paragraph 3 on Page 8, you state based
22 upon her findings, Nurse Bloomfield
23 appropriately did not find any indication for
24 special medical observation or monitoring of

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1 Miss Filichia during her weekend stay.

2 Do you see that?

3 A. I do.

4 Q. All right. And with respect to
5 that particular opinion, is that based on the
6 items that are set forth above it that you
7 discuss regarding Miss Bloomfield's activity
8 with respect to Miss Filichia in Paragraph
9 Number 3?

10 A. There was lots of parts to that.
11 Could you repeat that question, please?

12

13 (Whereupon, the following
14 portion of the record was read by the court
15 reporter:

16 "QUESTION: And with respect to
17 that particular opinion, is that based on the
18 items that are set forth above it that you
19 discuss regarding Miss Bloomfield's activity
20 with respect to Miss Filichia in Paragraph
21 Number 3?"

22

23 THE WITNESS: It is based upon
24 my review of the records upon all the things

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1 that Nurse Bloomfield did and her previous
2 records there.

3 BY MS. PROBST:

4 Q. When you say her previous
5 records there you mean Miss Filichia?

6 A. I do.

7 Q. As part of your review in
8 forming the opinions that are set forth in
9 Exhibit 1, you indicate that you reviewed the
10 CCS or CHC incorporated policies; is that
11 correct?

12 A. I did.

13 Q. And then you also indicated that
14 you reviewed the Delaware County jail's or
15 sheriff's office medical SOP; is that
16 correct?

17 A. I did.

18 Q. All right. With respect to your
19 review, did you review the contract between
20 the Delaware County sheriff's office jail and
21 CCS for the provision of medical services in
22 the jail?

23 A. To the best of my recollection,
24 I did not.

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1 Q. All right. Now, with respect to
2 the medical standard operating procedure, do
3 you recall whether or not the Delaware County
4 sheriffs required that anyone in a state
5 whose health was questionable be taken to a
6 hospital prior to delivery to the jail?

7 A. Do you have that particular
8 policy in front of you that I could review?

9 Q. No.

10 A. Okay. I recall -- I recall
11 discussions about that question and about
12 that policy from prior deposition
13 transcripts. Actually, I believe I have it.
14 I believe it was somebody's deposition. Let
15 me see if I have that policy so I could talk
16 more cognitively about it. I do recall that
17 language. I do not have it in front of me
18 and cannot refer to the specific language.

19 Q. Let me ask a different question.
20 I don't like the question anyway because I
21 didn't bring it.

22 With respect to Ms. Filichia,
23 you would agree that when she visited the
24 emergency room prior to her February 20th

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1 incarceration, when she visited the emergency
2 room on February 4th, that she was diagnosed
3 with colitis?

4 A. That is what the record says.

5 Q. You would agree that prior to
6 her incarceration on February 20th, she had
7 had surgery in October of 2015 for removal of
8 a portion of her colon as a result of
9 diverticulitis?

10 A. That is correct.

11 Q. You would agree, according to
12 your report, that Miss Filichia had a history
13 of the use of methadone in a therapeutic
14 manner for pain relief; right?

15 A. I would not.

16 Q. Okay. You would agree that Miss
17 Filichia had a history of chronic pain for
18 which she had previously been on opiates;
19 correct?

20 A. My basis for me saying that I
21 disagreed with what you just said, your
22 question was not that.

23 Q. I understand. I rephrased the
24 question. You would agree that Miss

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1 Filichia, prior to her incarceration on
2 February 20th, had a history of the use of
3 opiates for treatment of her chronic pain?

4 A. I agree that is what it says in
5 there and that is some of what is addressed
6 in my supplemental report. My opinion
7 changed about that after reviewing additional
8 records.

9 Q. You would agree that Miss
10 Filichia was diagnosed with colitis on
11 February 4th of 2016?

12 A. Say it again.

13 Q. You would agree that Miss
14 Filichia was diagnosed with colitis on
15 February 4th of 2016?

16 A. By the emergency department
17 physician, yes.

18 Q. You would agree that
19 Ms. Filichia was given prescriptions for
20 Flagyl and Cipro as a result of that
21 diagnosis?

22 A. She was written a prescription
23 in the emergency department for Cipro for
24 five days and for Flagyl for ten days. She

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1 was told not to take the Flagyl for two days
2 because she had come to the emergency
3 department intoxicated and you're not
4 supposed to take Flagyl within about 48 hours
5 of ingesting alcohol. So, she was told not
6 to start. And she was given those two
7 prescriptions, yes.

8 Q. You would agree that Miss
9 Filichia had also had a history of the use of
10 Ativan to treat anxiety?

11 A. I would. I need to correct my
12 answer. I know that she was prescribed for a
13 diagnosis of Ativan. I don't know and I
14 don't believe that the -- I didn't see in the
15 records a diagnosis of anxiety, at least not
16 in the recent records. But I know she was on
17 chronic Benzo use, pretty high doses.

18 Q. What do you mean Benzo?

19 A. Ativan, Benzodiazepine, of which
20 Ativan is one example.

21 Q. Thank you. You would also agree
22 that when she presented at the Delaware
23 County jail she informed Miss Bloomfield that
24 she was having abdominal pain, would you not?

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1 MR. SCHUMACHER: Object.

2 THE WITNESS: I do not know

3 that.

4 BY MS. PROBST:

5 Q. Would you agree that Deputy
6 Mohnsen informed Ms. Bloomfield that she was
7 having abdominal pain?

8 A. I do not know what the
9 description was as it regards to abdominal
10 pain. I know there was discussion about her
11 having gastrointestinal problems and having
12 been to the emergency department and having
13 had a colonoscopy scheduled, whether it was
14 abdominal pain or some other gastrointestinal
15 complaints, I don't know.

16 Q. You were aware that Mr. James
17 Egbert asked that Ms. Filichia not be taken
18 to the jail because of her medical condition;
19 were you not?

20 A. I read Mr. Egbert's deposition
21 testimony. And I read the rest of the
22 record. Other portions of the record had
23 said something about Mr. Egbert, for her to
24 be taken to the hospital. But Mr. Egbert

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1 said, to the best of my recollection, he
2 didn't tell them or he didn't ask them to
3 take her to the hospital. He asked could she
4 stay at home because of ongoing abdominal
5 problems.

6 Q. My question was, you read
7 Mr. Egbert's testimony and he indicated that
8 he did not want her to go to the jail because
9 of her condition. Is that correct?

10 A. He didn't want her to go to the
11 jail, yes. And I believe it was due to her
12 abdominal -- it was due to her abdominal
13 problems, yes.

14 Q. Okay. Have you ever heard the
15 term fit for confinement?

16 A. I have.

17 Q. Do you know how it is defined in
18 the Delaware County -- in the agreement
19 between the Delaware County sheriff's office
20 and the Correctional Healthcare Company?

21 A. How the term fit for confinement
22 is defined in that document?

23 Q. Uh-huh.

24 A. Well, I've not reviewed that

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1 document. So, if there is a definition of
2 fit for confinement in that document, I
3 wouldn't know what the language was.

4 Q. Do you know what training
5 Correctional Healthcare Company provides, if
6 any, to its employees to determine whether or
7 not an individual is fit for confinement?

8 A. You're talking about the
9 correctional officers?

10 Q. No. I'm talking about its
11 employees.

12 A. Okay. There's two different
13 things. I'm sorry. You said the Delaware --

14 Q. I thought I said -- let me ask
15 again just so we're clear.

16 A. Okay.

17 Q. You do know what training, if
18 any, the Correctional Healthcare Company
19 provides to its employees to deter -- to make
20 a determination of whether or not someone is
21 fit for confinement?

22 A. That would be part of the normal
23 intake screening training that is provided by
24 companies and I believe -- I can't say that I

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1 reviewed the entire agenda of the orientation
2 manual, but part of the training would be
3 found under intake screening, how to do an
4 appropriate intake screening.

5 Because the fit for confinement
6 wording is typically a correctional word as
7 opposed to a medical term.

8 Q. Turning to Page 10 of Exhibit 1.

9 The first sentence of Page 1,
10 Exhibit 1, says Miss Filichia had several
11 ongoing medical issues which contributed to
12 her death.

13 Do you see that? Very first
14 sentence next to Roman Numeral II.

15 A. Yes.

16 Q. Which ongoing medical issues
17 that she had at the time of her admission
18 into the jail contributed to her death?

19 Which ongoing medical issues of Miss
20 Filichia, which she had at the time of her
21 admission to the jail, contributed to her
22 death?

23 A. Her chronic pain syndrome. Her
24 chronic gastrointestinal issues.

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1 Q. Uh-huh.

2 A. Her chronic opiate use and her
3 other substance use.

4 Q. Let's flip to Page 12, please.
5 You indicate on Page 12 that, in Roman
6 Numeral III that the policies and procedures
7 in place regarding medical care at the
8 Delaware County jail are reasonable and
9 appropriate.

10 Do you see that?

11 A. I do.

12 Q. And when you say the policies
13 and procedures plural, which ones do you mean
14 specifically?

15 A. There are -- there are a number
16 of them. I reviewed some 370 pages of
17 policies and procedures.

18 Q. From the Delaware County jail?
19 I'm not talking about CCS.

20 A. It says in place regarding
21 medical care. So, that would be CCS
22 policies.

23 Q. Okay. So, you're talking about
24 CCS policies. Thank you.

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1 A. Well, there were also -- I
2 reviewed a couple of policies from the jail;
3 the one you just referenced. Those appeared
4 reasonable as well. I did not review their
5 entire policy and procedure manual. I wasn't
6 retained to provide opinions with regard to
7 the policies and procedures in the Delaware
8 County jail.

9 Q. I understand that. That's why I
10 was asking, with reference to the specific
11 question because it's a general statement and
12 you reference a Delaware County jail, if you
13 meant their policies or correctional
14 healthcare policies?

15 A. All the policies I reviewed
16 regarding medical care, which were primarily
17 the CCS policies. There were a couple of
18 policies that I reviewed regarding intake
19 screenings from the Delaware County jail and
20 they appeared reasonable as well, although I
21 was not retained for that purpose.

22 Q. Next, you next say it is my
23 medical opinion that the practice of the
24 Delaware County jail of not repeating the

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1 medical receiving screening on inmates
2 returning to serve weekend time is not in
3 compliance with the written policy requiring
4 it on each inmate upon arrival at the jail.

5 Do you see that?

6 A. I do.

7 Q. Okay. You previously
8 testified -- well, do you continue to hold
9 that opinion?

10 MR. DOWNEY: Object. Go ahead.

11 THE WITNESS: I believe that
12 the -- I hold that opinion in part and have
13 changed that opinion in part.

14 So, if the correctional -- if
15 CCS had a policy of not doing intake
16 screenings on inmates when they returned,
17 then it is not in compliance with the written
18 policy that required that.

19 The jail, I believe, I did not
20 see a policy, written policy with regards to
21 this, I only saw the opinions or the
22 statements in the -- in some investigator
23 reports or in the records, that they did not
24 repeat the booking paperwork which could or

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1 could not include their screening.

2 So, a medical screening, when a
3 person comes into a jail facility, the first
4 document that is normally done is an intake
5 screening. That screening can be done by a
6 trained correctional officer or by a trained
7 nurse, depending on who's on duty and how the
8 staffing is.

9 So, it could be done by either
10 one. And that statement was to reflect that
11 if it is not the policy for that to be done
12 each time, it would potentially be -- it
13 would be not necessarily a breach of the
14 standard of care, but what I would consider
15 unsafe practice because it would be possible
16 that conditions could have changed.

17 In this particular situation,
18 it's clear that she was assessed by a nurse,
19 not even by a correctional officer, so the
20 correctional officers weren't involved in
21 that.

22 BY MS. PROBST:

23 Q. Are you aware that the Delaware
24 County jail has its own intake procedure form

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1 for assessing patients?

2 A. You're talking about the policy?

3 Q. Are you aware -- let me reask
4 the question.

5 Are you aware that the Delaware
6 County jail has an intake questionnaire for
7 all of its detainees who are booked into the
8 jail?

9 A. Yes.

10 Q. Are you aware that that
11 particular intake questionnaire is separate
12 from an assessment done by a nurse?

13 MR. DOWNEY: Objection. You can
14 answer.

15 THE WITNESS: I am aware that it
16 is not.

17 BY MS. PROBST:

18 Q. You're aware that it is not.
19 You believe them to be the same thing?

20 A. No. Let me explain, please.

21 What I believe is that I'm going
22 to go back to Ms. Filichia's prior
23 incarceration to show you what I'm talking
24 about. This form right here, it may be over

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1 in the medical chart. I'm sorry. I have it
2 in the medical chart.

3 This form. Give me just a
4 minute.

5 Q. Take your time.

6 A. I have the chart separated.

7 So, this form right here, that
8 right there is what is typically in the
9 industry referred to as intake screening
10 form. And it can be --

11 MR. DOWNEY: What's the number
12 on that?

13 THE WITNESS: CCS 000060.

14 That is an intake screening
15 form. This is done when a person first
16 arrives to ask them questions that determines
17 emergent medical conditions so that you can
18 describe, as you said, fit for confinement or
19 questionable health. That's what these forms
20 are used for.

21 And this form can be filled out,
22 according to -- NCCH guidelines, which don't
23 establish standards of care, but
24 nevertheless, are guidelines for best

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1 practices, say that this form can be filled
2 out or asked -- for objection can be asked by
3 either a healthcare professional, i.e., a
4 nurse, or a trained correctional officer.

5 BY MS. PROBST:

6 Q. Right.

7 A. And so depending upon the
8 staffing of the facility in many facilities,
9 there are no nurses as a for instance at
10 nighttime or on the weekends or maybe even,
11 you know, depending. There might not be any
12 nurse present nighttimes or weekends. So,
13 this form would be filled out by a
14 correctional officer.

15 What then normally happens is
16 that there is a medical intake form and the
17 nurse reviews this and does a medical intake
18 form or does this form directly.

19 In this particular case, this
20 form was not filled out by the officer
21 because the nurse saw the person, saw
22 Ms. Filichia directly. There was no
23 correctional officer involved in filling out
24 this form.

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1 They said basically, we're
2 bypassing this form and asking the nurse to
3 see rather than have a specific form that we
4 have to fill out before we can ask a nurse to
5 see it.

6 So, this form can be filled out
7 by either and they ask Nurse Bloomfield
8 directly to see the nurse. That's how that
9 works.

10 Q. I appreciate that. Do you
11 actually know if a correction officer at the
12 Delaware County jail made a conscious
13 decision that we're not going to fill out a
14 form and we're going to have Miss Filichia
15 seen by a nurse instead?

16 A. Yes.

17 Q. Oh, you do? How?

18 A. Well, when the deputy brought
19 the person in, when the deputy brought
20 Ms. Filichia in out of the sallyport, he said
21 we need to talk to the nurse. We need the
22 nurse to assess. That's what that means.

23 We're going to bypass the
24 normal -- we're going to bypass the normal

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1 process of booking the person in and the
2 correctional officers, the booking officer
3 being the first to look at them. Would you
4 please get the nurse to come do the
5 assessment.

6 This is standard in many
7 facilities. It has different names, but it's
8 often called on the wall or behind the line
9 or before the line. You saw a thing about
10 the red line. They are asking a nurse to
11 make an assessment before the person is
12 accepted into the jail. That's how it works.

13 Q. I appreciate that.

14 Do you have any reason to
15 believe that Mr. -- why Mr. Mohnsen wanted
16 the -- Deputy Mohnsen wanted the nurse to
17 make the assessment?

18 A. Yes. Because -- yes. The
19 reasons are that when they went to Miss
20 Filichia to arrest her, the boyfriend,
21 Mr. Egbert said she's having medical
22 problems. Please don't take her to jail.
23 She said I have been to the ER, I have this
24 paperwork. I am supposed to have a

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1 colonoscopy next week and so he knew that
2 some medical person needed to make an
3 assessment about that. When he got to the
4 jail, he said we need the nurse to come here.

5 Q. We need the L.P.N. to come
6 assess her medical condition?

7 A. We need the nurse on duty to
8 come there. He didn't ask for an L.P.N. He
9 didn't ask for anybody particularly. He
10 asked for whoever.

11 But that determination is
12 appropriately made by a trained correctional
13 officer or in many facilities a medical
14 assistant, an EMT, paramedic or nurse in some
15 cases.

16 Q. If the State of Ohio statute
17 prohibited an L.P.N. from making an initial
18 assessment, would your opinion change?

19 MR. DOWNEY: Objection. You can
20 answer.

21 THE WITNESS: I don't believe
22 that any state's license practice would
23 prohibit an L.P.N. from making an initial
24 assessment of a patient in a jail.

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1 BY MS. PROBST:

2 Q. In a jail? Is your opinion
3 limited to in a jail?

4 A. You just said that the initial
5 assessment. What I'm telling you is I don't
6 believe any state's medical practice would
7 prohibit an L.P.N. from doing an initial
8 assessment of a patient in a jail. Yes, I
9 don't believe that.

10 Q. Okay. Great.

11 Let's look at Exhibit 4, please.
12 It's titled summary of points in Miss
13 LaMarre's report with which I disagree.

14 A. Okay.

15 Q. All right. When did you create
16 this document?

17 A. Within the last few days.

18 Q. Were you asked to create this by
19 Mr. Schumacher?

20 A. I was not.

21 Q. Why did you create it?

22 A. Because I was asked to review
23 the expert reports and the depositions and so
24 because I did not agree with those findings

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1 and because I wasn't sure that I could
2 remember all the reasons that I disagreed
3 with those findings, I wrote it down.

4 Q. All right. And is Exhibit 4 the
5 sum total of your disagreement with Miss
6 LaMarre?

7 A. It's a summary. Certainly not.
8 It is a summary of my findings.

9 MR. DOWNEY: For the record,
10 it's three pages.

11 MS. PROBST: Yes. I think we
12 said that when we identified it.

13 All right.

14 BY MS. PROBST:

15 Q. I want to ask you two questions
16 about Exhibit 4, Page 1, which is a number
17 one circled at the top right-hand corner,
18 numbered Paragraph 2 the last dash it says
19 consulted with a physician.

20 Do you see that?

21 A. I do.

22 Q. I'm assuming you mean to get a
23 Senna prescription; is that correct?

24 A. No.

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1 Q. You don't mean that?

2 A. No.

3 Q. What other record is there that
4 anyone at the Delaware County jail, the
5 medical staff or the correction officers
6 consulted with a physician for any purpose
7 other than ordering a Senna laxative on
8 February 20th or 21st?

9 A. I believe that Nurse Bloomfield
10 said that she called Dr. Mitchell,
11 consultation with a physician. I don't
12 believe she said it was limited to that. I
13 believe she said she called and spoke with
14 her about the case.

15 Q. I understand that. But her
16 nurse's note dated March 3rd of 2016, which
17 we've reviewed, which I'd like you to review
18 again, indicates, please -- you don't have
19 to --

20 MR. SCHUMACHER: We've been all
21 over this once. Do we have to do it again?

22 MS. PROBST: They conflict.

23 So, Ms. Bloomfield's deposition
24 testimony that she consulted with

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1 Dr. Mitchell conflicts with her nurse's note.

2 So, and I'm asking you then,
3 sir, do you agree with her deposition
4 testimony or her nurse's note?

5 MR. SCHUMACHER: Objection.

6 MR. DOWNEY: I object. Form.

7 MR. SCHUMACHER: Form.

8 THE WITNESS: And stating
9 opinion.

10 MS. PROBST: Go ahead.

11 THE WITNESS: These are
12 supplemental reports or supplemental opinion
13 that I've created since reviewing the
14 additional records, since reviewing the
15 deposition testimony.

16 I don't believe that Nurse
17 Bloomfield's deposition testimony conflicts
18 with her nurses' notes. I believe that the
19 nurse's note does not address that and that
20 Ms. Bloomfield's deposition testimony was
21 that she called and consulted with
22 Dr. Mitchell and that's the basis upon which
23 I made the supplemental opinion.

24 BY MS. PROBST:

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1 Q. What did she consult with
2 Dr. Mitchell about?

3 MR. DOWNEY: Objection. Asked
4 and answered.

5 THE WITNESS: It's in her
6 deposition testimony. I don't recall the
7 exact wording.

8 BY MS. PROBST:

9 Q. Okay. If you could, please,
10 look at Page 3 of Exhibit 4.

11 A. Yes.

12 Q. All right. Number circled
13 Number 9 on the left. Under that, you have
14 four dashes. The first one being protocols,
15 ordered and approved by doctor.

16 Specifically, are you referring
17 to the three medications which Miss Filichia
18 was receiving as the protocols, the Remeron,
19 the Senna and the Pro Air?

20 A. No.

21 Q. What are you referring to then
22 as the protocols?

23 A. Well, there was a whole series
24 of protocols about how to deal with certain

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1 conditions such as gastrointestinal
2 complaints, such as providing or not
3 providing narcotic medications. Some of them
4 I'm quite sure are contained or some of them
5 are in the record but the actual protocols
6 are not. The results of them are.

7 There's -- there are protocols
8 that drive the care of the nurses and the
9 medications which are or are not going to be
10 approved that have been promulgated by
11 Dr. Mitchell. And as a result of having
12 those protocols and procedures in place, what
13 the nurses do in response to them is not
14 independent practice or independent
15 assessments.

16 Q. With respect to the
17 gastrointestinal protocols, what
18 gastrointestinal protocols did the nurses on
19 duty, on February 20th, follow, if any?

20 A. To the best of my knowledge,
21 Miss Filichia did not make a request for
22 medical care.

23 Q. When? Sorry.

24 Is it your testimony that on

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1 February 20th, that Miss Filichia did not
2 indicate to Miss Bloomfield that she was
3 having abdominal pain and requesting narcotic
4 medication?

5 A. I don't know the reason. I know
6 that she requested narcotic medication. I
7 don't know if the narcotic medication was
8 requested due to her gastrointestinal
9 symptoms or not.

10 Q. Do you know or did you review
11 the video where Deputy Mohnsen referred to
12 Miss Filichia having pain in her abdomen?

13 A. I reviewed a number of
14 deposition testimony with regard to that.
15 And I believe that it was not, they said it
16 wasn't pain but merely referring to the
17 abdominal area, maybe in reference to her
18 having been to the emergency department
19 diagnosed with colitis or having a
20 colostomy -- excuse me -- colonoscopy.

21 I don't know what it was in
22 reference to.

23 Q. Doesn't colitis involve the
24 gastrointestinal tract?

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1 A. Yes. And she clearly had a
2 history of gastrointestinal diagnosis, which
3 is entirely different than complaining of
4 gastrointestinal problems at that time or
5 requesting medical assistance for them.

6 Q. She brought in her paperwork
7 from Grady Memorial and Miss Bloomfield noted
8 that in her nurse's note on March 3rd after
9 she died; right?

10 A. I believe that she had some
11 discharge instructions from Grady Memorial
12 and I believe that Nurse Bloomfield did note
13 those, yes.

14 Q. And we all agree that Miss
15 Filichia had been diagnosed with colitis
16 earlier in February; is that right?

17 A. She had been to the emergency
18 department on February 4th and one of her
19 diagnoses was colitis.

20 Q. And then we all agree that she
21 asked Nurse Bloomfield to be given narcotics
22 in the jail on February 20th; is that
23 correct?

24 A. According to the note written by

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1 Nurse Bloomfield she asked for narcotics.

2 Just to clarify on my last
3 answer, though, you said about the diagnosis
4 of colitis.

5 When she went to her general
6 surgeon, Dr. Fuller on the 17th, he said that
7 the findings were nonspecific. He was unsure
8 if it was colitis or not.

9 So, it is true that the
10 diagnosis was given on an emergency
11 department visit, but Dr. Fuller, her own
12 surgeon, wasn't sure if that was the
13 diagnosis or not.

14 Q. All right.

15 Knowing all of that, there was
16 no gastrointestinal protocol followed by
17 anyone on February 20th, 2016 at the time
18 Miss Filichia was admitted to the jail; isn't
19 that right?

20 A. There was a protocol followed
21 for her assessment upon admission, giving her
22 medications. Ms. Filichia did not fill out a
23 sick call request, requesting any particular
24 medical treatment and the treatment protocol

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1 that is normally used in response to a sick
2 call request was not used in this case and it
3 should not have been.

4 Q. The second dash you put
5 consulted with a physician. Is that the same
6 thing you're talking about previously,
7 Ms. Bloomfield's statement in her deposition
8 that at some point she called the doctor?

9 A. Well, it's documented in the
10 record that the doctor was called as well.

11 Q. It's just -- the record
12 documents only the call of the Senna
13 laxative; correct?

14 A. There is a -- there is a
15 telephone order which means that someone
16 spoke with the doctor and Dr. Mitchell later
17 cosigns that saying that she agreed with
18 that.

19 That is evidence that the doctor
20 was called and consulted with.

21 Q. I understand that. And that's
22 the limitation of your statement, consulted
23 with a physician, yes or no?

24 A. That and Ms. Bloomfield's

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1 deposition testimony.

2 Q. Okay. Doctor's orders for
3 prescription, what do you mean by that? I'm
4 assuming RX means prescription?

5 A. That is correct.

6 Q. Go ahead. What do you mean by
7 the dash doctor's orders for prescription?

8 A. There were -- remember, this is
9 in reference to Ms. LaMarre's report.

10 Q. I understand that.

11 A. She had references in there that
12 they had decided which medicines to give or
13 not to give independently. And therefore,
14 exceeded the scope of their practice. That
15 is not, I do not believe it is true because
16 the doctor was the one ordering and
17 responsible for each of the medications in
18 this case.

19 Q. Each of the medications that
20 there's a record of giving in the medical
21 records that you've reviewed; correct?

22 A. That's correct.

23 Q. You're -- you also agree though
24 that there was a bag of medicine that

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1 Ms. Filichia brought in; correct?

2 A. No. I will agree that -- I will
3 agree that there was a bag. I will agree
4 that the officers say there were pills in it.
5 Whether they were in bottles, whether it was
6 actually her medications or not, I don't
7 know.

8 As a for instance, whether the
9 Remeron, which is dispensed that night was
10 contained in that bag or whether it was on
11 the med cart, I don't know.

12 Whether the prescription that
13 had been -- the two prescriptions that had
14 been written on the 4th of --

15 Q. February?

16 A. -- February and should have been
17 completed by that time, whether they -- those
18 bottles were in there and whether, if they
19 were in there, whether they were empty or
20 whether Ms. Filichia had not taken them as
21 directed, I don't know.

22 I also don't know whether there
23 were narcotic medications.

24 What I do know is that there's

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1 no evidence in the record anywhere of
2 Ms. Filichia being prescribed opiate
3 medications in the previous four months or
4 ever being prescribed methadone. So I do
5 know that there would not be medications of
6 those in there.

7 Q. Well, you haven't reviewed Miss
8 Filichia's Orr's reports which would contain
9 a complete record on prescribed medications;
10 is that true?

11 A. I have not.

12 Q. That would be the only complete
13 record of prescribed medications that would
14 indicate whether or not she had received
15 particular prescriptions and the length of
16 those prescriptions; isn't that right?

17 A. I don't believe that's right.
18 Because in each of her Grady Hospital
19 reports, emergency department reports when it
20 asks who her personal physician is, it lists
21 Dr. Stock. I got Dr. Stock's records and he
22 has a fairly extensive list of medications,
23 including controlled substances he's
24 prescribing.

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1 So, he makes no mention of other
2 opiate being prescribed by another provider
3 and there is no mention anywhere in the chart
4 of her going to other providers.

5 So, I don't believe that the
6 Orr's report is the only source showing she
7 didn't receive those medications.

8 If it does show other
9 medications, then she did it without
10 revealing it to Dr. Stock to the Grady
11 hospital or to Dr. Fuller.

12 Q. With respect to Ativan, we all
13 agree that at some point she was prescribed
14 Ativan; right?

15 A. She was prescribed it for a
16 number of years.

17 Q. Right. Do you have any
18 knowledge of whether or not she brought a
19 current prescription of Ativan with her to
20 the correctional facility that day?

21 A. I do not.

22 Q. Nobody knows what was in that
23 bag because it's gone, is that right, that
24 Ms. Filichia brought to the jail with her?

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1 A. I don't know if it's gone. May
2 still be at the Delaware County jail locked
3 up. I don't know where it is.

4 Or somebody could have picked it
5 up. One of her relatives could have picked
6 it up. I don't know.

7 Q. Next you say that trained CO
8 staff are able to do screenings. Do you see
9 that?

10 A. I do. I said I see that. Tell
11 me where.

12 MR. SCHUMACHER: Last thing on
13 Page 3.

14 BY MS. PROBST:

15 Q. It's the last dash.

16 A. Got you.

17 Q. Next thing strained CO staff are
18 able to do screenings?

19 A. Right.

20 Q. Do you mean initial assessments?

21 A. No. I mean intake medical
22 screenings.

23 Q. Do you mean the questionnaire we
24 were discussing earlier?

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1 A. It is typically called, in most
2 facilities, that is called an intake
3 screening. Some places it's called an intake
4 health screening.

5 But in the -- in CCHC guidelines
6 it's referred to as a receiving screening.

7 Q. Correct.

8 A. And the receiving screening can
9 be performed by trained CO staff or by
10 healthcare professionals, either one.

11 In this case, and it would be a
12 better standard if a healthcare professional
13 were doing it.

14 So, in this case, it was done by
15 Nurse Bloomfield, by a nurse. But it could
16 be done by a trained correctional officer.

17 Q. Nurse Bloomfield, according to
18 your testimony, and hers, did an initial
19 assessment; is that right?

20 A. She did do an assessment, that's
21 correct.

22 Q. There is no medical intake
23 screening questionnaire for February 20th
24 that was completed by anyone; isn't that

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1 right?

2 A. I do not see the form. I know
3 that she did the assessment. I do not see
4 the form in the chart.

5 Q. You don't know what questions
6 Ms. Bloomfield asked Miss Filichia other than
7 what she reported on her nurse's note that
8 she did on March 3rd after she died; is that
9 right?

10 A. Ask the question again, please.

11 Q. You do not know what questions
12 Ms. Bloomfield asked Miss Filichia during her
13 initial assessment other than what she wrote
14 in the nurse's note on March 3rd, 2016, which
15 was written after she died; right?

16 A. And --

17 MR. DOWNEY: Objection. Go
18 ahead.

19 THE WITNESS: And there is also
20 her deposition testimony.

21 BY MS. PROBST:

22 Q. Right.

23 A. This bullet point was not in
24 relationship to that, though. It was that --

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1 it is that Ms. LaMarre was saying that the
2 male P.E.N. that Miss Bloomfield did an
3 initial assessment or what she called and
4 independent assessment and made an
5 independent judgment and that was
6 inappropriate and beyond the scope of
7 practice for an L.P.N.

8 I'm saying that because not only
9 can L.P.N.s do it, but trained correctional
10 staff can do it. There's no way it has to be
11 an L.P.N. It does not have to be exceeding
12 the scope of an L.P.N.'s practice.

13 Q. We've discussed the difference
14 between an initial screening, which is a form
15 and an initial assessment. Is there not a
16 difference?

17 A. No. Well, first of all, so,
18 you're distinguishing number one between
19 forms.

20 Q. I am.

21 A. That's right. Okay. So there
22 is an assessment that is done. That
23 assessment can be done by a trained
24 correctional officer. If it is done by a

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1 trained correctional officer, a nurse should
2 review it and as part of the initial
3 assessment -- so for instance, a correctional
4 officer cannot order medications.

5 Q. Neither can an L.P.N.; correct?

6 A. No. No. Cannot start -- cannot
7 continue medications. Yes, an L.P.N. can
8 continue a valid prescription of medications.

9 Q. I understand.

10 A. A correctional officer should
11 not be doing that. So if a correctional
12 officer does the intake assessment it needs
13 to be reviewed by the medical staff and then
14 and only then are medications started, are
15 vital signs taken, all of those kinds of
16 things that are then done and the orders are
17 followed.

18 So, you can have it done that
19 way. Or, as in this case, the nurse can do
20 the assessment directly, bypassing the first
21 step and that was what was done in this case.

22 Q. There are two steps. There is a
23 receiving screening or an intake
24 questionnaire that the Delaware County

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1 sheriff's jail fills out, according to their
2 policies; isn't that right?

3 MR. DOWNEY: Objection.

4 THE WITNESS: No, I don't
5 believe that's right.

6 BY MS. PROBST:

7 Q. Did you ever read the intake
8 procedure policy of the Delaware County jail?

9 MR. DOWNEY: Objection. Asked
10 and answered.

11 THE WITNESS: I saw individual
12 policies. I did not see the entire policy.

13 But when a person is booked into
14 a jail, there is a form that either a
15 correctional officer or a nurse fills out.
16 The correctional officer does not have to do
17 it in advance of the nurse, to the best of my
18 understanding.

19 BY MS. PROBST:

20 Q. All right. Look at Number 10,
21 that same page, please. I didn't mean to
22 order you. Look at Number 10 on Page 3.

23 MR. DOWNEY: I listened.

24 BY MS. PROBST:

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1 Q. Of Exhibit 4.

2 A. Yes.

3 Q. All right. You next state, I
4 believe, that this is something you're
5 listing as a difference of opinion with
6 Ms. LaMarre that DCSO and CCS did not have an
7 adequate healthcare system or policies
8 forward slash procedures.

9 Do you see that on numbered list
10 ten?

11 A. I do.

12 Q. I'm going to ask a series of
13 questions related to this. And so I want you
14 to -- I want you to assume.

15 A. Could you stop for a moment,
16 please?

17 Q. Yes.

18 A. You told me to look at you and
19 listen to your series of questions. But this
20 relates to a disagreement that I had with
21 Ms. LaMarre's report directly. Can I turn to
22 that section where she addresses that?

23 Q. That's fine.

24 A. So, just for the record, this is

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1 on Page 10 of her rebuttal report, letter
2 number J, where she says Delaware County
3 sheriff's department and CHC did not
4 establish adequate healthcare system to
5 provide adequate healthcare to Rhianna
6 Filichia or other DCSO detainees.

7 And then she goes on to say what
8 an adequate healthcare system is. And I
9 disagreed with her findings there, hence I
10 wrote that statement right there.

11 Q. Okay.

12 A. It references only that number
13 J. I disagree with her findings in number J.

14 Q. I appreciate that.

15 I'm going to ask you some
16 questions that I believe are related, but are
17 really not in either of your reports.

18 A. Okay.

19 Q. Okay. Now, I know you indicated
20 that you've not seen the agreement with --
21 between the Delaware County jail and -- your
22 saying CCS is really confused my head --
23 between CHC, Inc. and the Delaware County
24 jail. That's correct; right?

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1 A. That's correct.

2 Q. I would like you to assume that
3 that contract indicates that there is no
4 registered nurse time provided by that
5 contract. Okay? For purposes of these
6 questions. Please assume that. Okay?

7 A. Do you mean provided or
8 required?

9 Q. In the -- what I mean is that
10 the contract states that there is not any
11 time to be paid for a registered nurse and
12 that a registered nurse is not on staff. I
13 want you to assume that. Okay?

14 A. Okay.

15 Q. All right. Now, if a registered
16 nurse is not on staff -- well, we're assuming
17 that's assumption one. And then assumption
18 two I want you to assume that the statute in
19 the State of Ohio prevents an L.P.N. from
20 doing an initial assessment. Okay? Those
21 two assumptions. All right?

22 Now, with those two things being
23 true, if the Delaware County jail only has
24 L.P.N.s on staff at all time and the statutes

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1 of the State of Ohio prevent those L.P.N.s
2 from doing initial assessments, is it true
3 that any individual detainee who's admitted
4 to that jail would not be given access to
5 medical care at the time they are admitted?

6 MR. DOWNEY: Objection to the
7 form of the question.

8 MR. SCHUMACHER: Objection.

9 MS. PROBST: I'm terrible at
10 asking questions. You're going to hear this
11 a lot. Go ahead.

12 THE WITNESS: In order for me to
13 give an answer to your hypothetical, I would
14 need to see what you're talking about, about
15 the Ohio Nursing Practice Act not allowing
16 initial assessments, because I don't believe
17 that any state has a nursing practice which
18 prohibits L.P.N.s from doing initial
19 assessments on patients in jail.

20 So, I don't believe that that is
21 what is meant by the Nursing Practice Act.

22 And if you want for me to assume
23 that, you're going to have to be more
24 specific.

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1 BY MS. PROBST:

2 Q. Okay. Of course I brought it to
3 Nurse Connelly's deposition, but I didn't
4 bring it here.

5 A. Okay.

6 Q. So, my horribly asked
7 hypothetical, which by the way, I haven't
8 asked one in all of my depositions that has
9 not been objected to.

10 MR. SCHUMACHER: What a
11 surprise.

12 BY MS. PROBST:

13 Q. I don't think I have it. I'm
14 almost certain I specifically told my
15 assistant not to make a copy of it.

16 MR. DOWNEY: There's already
17 testimony that you don't have to have nurses
18 on duty to do assessments. I mean the
19 witness is already on the record.

20 MS. PROBST: I know that he said
21 that. But I'm giving him a hypothetical, but
22 let me see if it works out for me. I
23 appreciate that, though.

24 BY MS. PROBST:

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1 Q. Let's move on then because I
2 don't have it and I don't want to waste
3 everyone's time.

4 A. Okay.

5 Q. Hypothesizing about something
6 that you'd like to see. Let's go to Exhibit
7 5, which is titled summary of issues with
8 Dr. Manokas' report. All right. Let's go to
9 part two of that particular exhibit. I mean
10 paragraph numbered two with a circle around
11 it.

12 A. Uh-huh.

13 Q. You state no evidence that
14 providing Ms. Filichia with a previously
15 prescribed laxative and encouraging her to
16 intake water (as the ED discharge
17 instructions had said, is quote, the worst
18 thing to do, end quote, Paragraph 3.

19 A. Okay.

20 Q. All right. Why do you disagree
21 with that?

22 A. Well, so Dr. Manokas said that
23 giving her a laxative and encouraging her to
24 drink water was, quote, the worst thing to

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1 do.

2 So, I disagree with that
3 characterization of the worst. It shouldn't
4 be the worst thing one could do. There
5 should be worse things one could do than
6 giving her water, than giving her a laxative.
7 There should be worse things. That is a
8 very -- hold on a minute. I'm looking for
9 the word. That's a very definitive
10 statement, I should say, that that is the
11 worst thing that could be done.

12 There's number one, always
13 something worse that could have been done.
14 But particularly in this case, she had
15 previously been prescribed the laxative and
16 when she had been to the emergency department
17 on the 4th and been given the discharge
18 instructions which she had been given and
19 which she may well have had with her at that
20 time, one of those instructions specifically
21 said drink plenty of water.

22 So, you were saying she likely
23 had those discharge instructions with her. I
24 have the discharge instructions that she was

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1 provided and one of them was drink plenty of
2 water.

3 So, I disagree with his finding.

4 Q. All right. And that's why,
5 based on the discharge instructions and the
6 use of the word worst.

7 A. Well, he also, underlying that,
8 is that he presumed that there was a bowel
9 obstruction. I didn't see any evidence of a
10 bowel obstruction. She had not been vomiting
11 during that weekend that I saw any evidence
12 of or had other signs of an acute bowel
13 obstruction.

14 So, I don't believe that -- I
15 don't believe it's an underlying presumption
16 either. Or I disagree with his underlying
17 presumption that she had a bowel obstruction,
18 number one. And number two, those reasons
19 that I just stated.

20 Q. All right. On an off topic, you
21 indicate that the discharge instructions
22 indicated to drink plenty of water.

23 Do you remember that?

24 A. Yes.

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1 Q. You're also aware, though, that
2 Ms. Filichia's water to her cell was cut off,
3 are you not?

4 MR. DOWNEY: Objection.

5 BY MS. PROBST:

6 Q. Are you aware of that is the
7 question.

8 A. I am aware that not only am I
9 aware of that, but I'm also aware that they
10 provided her a pitcher and gave her water on
11 multiple occasions. I'm aware of both of
12 those instances.

13 Q. When you say you're aware they
14 provided her water on multiple occasions,
15 where are you getting that information?

16 A. There's testimony or I'm sorry,
17 not testimony, the investigative reports of
18 multiple correctional officers in both their
19 statements and in the deposition reports,
20 Nurse Bloomfield as well, plus at the time of
21 the death investigation there was a picture
22 taken where they took the pitcher out. The
23 pitcher itself was brought out of the room so
24 you could see that there was a pitcher in the

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1 room that had been providing her water.

2 Q. I understand that there was a
3 pitcher in the room.

4 A. Uh-huh.

5 Q. What evidence did you see of
6 individuals giving her water?

7 A. Their statements.

8 Q. Whose?

9 A. The correctional officers.

10 Q. Okay. There's only been a few
11 that have been deposed. So, which ones?

12 A. No. There was also, they gave
13 statements to the --

14 Q. Detective Overly?

15 A. Uh-huh. Between those and their
16 deposition testimony. I can't point out
17 exactly which ones at this moment. If you
18 wanted to give me time to review that I'd be
19 glad to look for it.

20 Q. I just wanted to know from where
21 you obtained that conclusion.

22 Exhibit 6, title. Additional
23 opinions since initial report.

24 A. Okay.

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1 Q. Paragraph 3.

2 A. Yes.

3 Q. Highlighted. Based on the
4 toxicology from February 4th of 2016,
5 emergency department visit, Miss Filichia was
6 taking at least two medications forward slash
7 substances for which she had not recently
8 been given a prescription.

9 What are those two substances?

10 A. If you would give me just a
11 moment. On Grady Hospital -- this may be my
12 Bates stamp. I'm not sure that it was a
13 Bates stamp --

14 Q. Go ahead.

15 A. GMH 001008.

16 Q. Uh-huh.

17 A. Which is a part of the record
18 from her emergency department visit on
19 February 4th, 2016.

20 There was a urine drug screen
21 done. That urine drug screen was positive
22 for Benzodiazepines, Methadone and opiate.

23 Q. That's the February 4th drug
24 screen; is that correct?

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1 A. That's correct. The emergency
2 department visit.

3 Ms. Filichia had been given
4 prescriptions by Dr. Stock for Ativan, which
5 is a Benzodiazepine and for Ultram, which is
6 an opioid but not an opiate.

7 What I mean by that is, as it
8 relates to this screen, it would not show
9 positive for opiates, the Ultram would not.
10 The Benzodiazepine would show positive for
11 the Benzodiazepine.

12 This result is consistent with
13 her taking some of the benzodiazepine, but
14 there is no screen for Ultram on here. So we
15 don't see whether she did or didn't take it
16 as a result of this screen. They don't test
17 for Ultram.

18 It tests positive for methadone,
19 which means that she had been taking
20 methadone.

21 Q. Uh-huh.

22 A. She had no prescription, had
23 never been given a prescription for
24 methadone, anywhere in the record I find no

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1 evidence of a prescription for methadone.

2 The opiate screen, although
3 methadone is an opiate, it's a synthetic
4 opiate and it does not cause the opiate
5 screen to turn positive. If you were only
6 taking methadone, the methadone would be
7 positive and the opiate would be negative.
8 That's why they have two different classes on
9 that screen.

10 So, in addition to being
11 prescribed Ultram which is an opiate, but
12 wouldn't test positive, in addition to taking
13 methadone, despite not being prescribed it,
14 she also was taking another opiate. And I
15 don't know what that opiate was, but it
16 wasn't one of these. And she had not been
17 prescribed opiates since back in October.
18 And she was only given a limited quantity at
19 that time.

20 So, I don't know what the two
21 substances specifically were.

22 Q. Okay.

23 A. I know that it was methadone
24 that she doesn't have a prescription for and

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1 some other opiate that she doesn't have a
2 prescription for or could be the elicit
3 opiate heroin as well would test that
4 positive.

5 Q. Okay. Let's go to that same
6 exhibit, page numbered circled two. I'm
7 going from the bottom up, if you will.

8 A. Okay.

9 Q. Your statement says based upon
10 review of the autopsy findings, toxicology
11 and photographs to a reasonable degree of
12 medical probability the cause of death was
13 not peritonitis.

14 Do you see that?

15 A. I do.

16 Q. All right. These materials that
17 you base this on, the autopsy findings, the
18 toxicology and the photographs, you had all
19 of those before you wrote the opinion that
20 you've provided and that we've reviewed as
21 Exhibit 1; right?

22 A. I did not have the autopsy
23 photographs, no. I only received them after
24 the report. And I did not have all of her

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1 medical records at the time of that first
2 report, either.

3 Q. But you didn't use those for
4 this particular conclusion.

5 So, what caused you to decide to
6 opine about her cause of death?

7 A. Just give me one moment, please.

8 Q. That's fine. Of course.

9 A. So, it was an expansion of what
10 my initial opinion had been that originally I
11 had said that on the autopsy note,
12 perforation was identified and there was a
13 predominance of chronic inflammation.

14 So, I was expanding upon or my
15 opinion was not a new -- it was not a new
16 opinion, but rather an expansion upon what I
17 had previously found or previously thought
18 about as a result of reviewing additional
19 records about what happened to her, the cause
20 of her death.

21 Q. Did anyone contact you and say,
22 hey, you should look, there's a cut in the
23 wall of the cecum? Did anyone call and tell
24 you to look at that specifically?

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1 A. No. No. I identified that as
2 part of my original review of the records.

3 Q. Okay.

4 A. If I might just explain there
5 just for a moment, my review of the
6 photographs of the autopsy photographs, it
7 appeared to me that the fluid that I saw
8 there appeared more feculent than purulent.
9 That was one of my main findings that led me
10 to believe it wasn't really peritonitis. The
11 pictures looked more like feculent fluid
12 rather than purulent fluid.

13 Q. So then it's your opinion that
14 the coroner -- excuse me, that Dr. MacDowell
15 is wrong?

16 A. It is my opinion that the cause
17 of her death was not peritonitis and was --
18 was not peritonitis.

19 Q. Dr. MacDowell made your finding.
20 Your opinion is that Dr. MacDowell is wrong?

21 A. I disagree with his finding of
22 the cause of death.

23 Q. All right. Going with Number 1
24 on Exhibit 6, the last sentence, do you see,

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1 it says some parts did not need to be
2 repeated such as restarting the previously
3 verified meds, but screening was done each
4 time.

5 What do you mean screening? And
6 this is my -- just to kind of ask you what
7 I'm saying, because I don't want to keep
8 asking the same questioning and boring
9 everyone. When you say screening do you mean
10 the initial assessment or do you mean the
11 intake screening document?

12 A. Well, we're not talking about
13 document here. We're talking about actual
14 screening and the screening is -- the
15 screening or an assessment or an action. The
16 form that may be documented as a result of
17 that assessment or that screening is a form,
18 is a paper record of whether that screening
19 or that assessment were done. But the
20 screening and the assessing are an action,
21 not a form.

22 Q. What leads you to the conclusion
23 that it is done every time an individual
24 arrives at the Delaware County jail,

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1 regardless of status, as a weekender or
2 otherwise, by the employees of the
3 correctional healthcare company?

4 A. My opinion was not that it was
5 done each time that a person comes there.
6 That is not my opinion. My opinion is that
7 she did it -- she said that she did it on
8 that date.

9 Q. Okay. Your opinion says was
10 done each time.

11 A. Was --

12 Q. It says it right there. Was
13 done each time.

14 A. The assessment was done each
15 time that she came. Each time Ms. Filichia
16 came. You just said -- I said I don't know
17 about every time a person comes. Each time
18 Ms. Filichia came, she was assessed and
19 screened each time she came.

20 Q. And -- all right. So, this
21 paragraph is about Miss Filichia
22 specifically, not about everyone that comes?

23 A. That's correct.

24 Q. Is that fair?

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1 A. That's correct.

2 Q. All right. Okay. What makes
3 you believe that she was assessed every time
4 she came to the Delaware County jail?

5 A. Well, particularly on this
6 incident, this time, the 20th, she's, Nurse
7 Bloomfield is seen on camera doing the
8 assessment. She's seen doing the assessment.

9 She said that not only did she
10 do the assessment, but she filled out the
11 paperwork. She filled out the assessment
12 intake paperwork is what her testimony is.

13 I admit that we do not have that
14 paperwork. I don't know what happened to it.
15 We don't have it.

16 It was my understanding when I
17 first wrote the report that they didn't do
18 that form each time that a person, a
19 weekender came back. Not each person. A
20 weekender is a rare occurrence -- not rare,
21 but it's not the usual. Somebody has done an
22 assessment and those forms are filled out
23 both by the correctional people and the
24 healthcare staff every time a person is

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1 arrested and booked into a jail. That is
2 their policy and that is what they say they
3 follow.

4 A weekender is different because
5 they are considered to be incarcerated from
6 the time of their first incarceration until
7 they get done with the ten weekends that they
8 are assigned. They are essentially on leave
9 in between there. So, the paperwork is not
10 repeated each time, according to my
11 information.

12 However, Ms. Bloomfield said
13 that she, in fact, did it this time. And so
14 each time at the very least, each time
15 Ms. Bloomfield came back she was seen by a
16 nurse, her medicines were restarted. Certain
17 things were done.

18 So whether or not the forms were
19 filled out anew each time is not really the
20 point, but Ms. Bloomfield, it is that she was
21 assessed each time.

22 Q. Okay. For Ms. Filichia's visits
23 prior to February, do you know that
24 Ms. Bloomfield did not work at the Delaware

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1 County jail?

2 A. Since reading her deposition,
3 I'm aware that she said she started around
4 the first of February. So, yes.

5 Q. All right.

6 A. On the two prior incarcerations
7 during this weekend, you know, during this
8 weekend -- I'm sorry -- do you mind if I
9 get -- let me get my timeline out.

10 So, Ms. Filichia was there on
11 the weekends of the 8th through the 10th, the
12 15th through the 17th of January and the 22nd
13 through the 24th.

14 Q. Uh-huh.

15 A. Then she failed to report on the
16 Fridays of the 29th of January, the 5th of
17 February and the 12th. And the 19th of
18 February.

19 She failed to report those four
20 Fridays.

21 And it was my understanding that
22 Nurse Bloomfield started some time around the
23 1st of February.

24 Q. Okay. The paperwork from

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1 January for Miss Filichia, we can agree that
2 there is not an initial assessment done of
3 Miss Filichia for each of those three visits
4 in January that you just detailed; isn't that
5 right?

6 A. You mean the form? Is that what
7 you're talking about?

8 Q. No. I mean that there was not
9 an initial assessment done?

10 MR. DOWNEY: Object.

11 THE WITNESS: There is an usual
12 assessment that is done on the 8th of
13 January.

14 BY MS. PROBST:

15 Q. I understand.

16 A. Okay. On the next two weekends,
17 there is evidence that nurses talked to her
18 and assessed her and restarted and started
19 medications.

20 Q. Go ahead. I don't mean to
21 interrupt you. You pause and I think you're
22 done.

23 A. That's all right. I talk slow.
24 I'm sorry.

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1 There is evidence that nurses
2 talked with, assessed Ms. Filichia and
3 provided medications and care to her. The
4 initial forms are not repeated those two
5 times.

6 Q. All right. Other than the
7 medical records showing that Miss Filichia
8 received medication on the next two visits,
9 what evidence is there that anybody assessed
10 her in January other than January 8th,
11 please.

12 A. And I presume you're talking
13 about the weekend of January 8th through the
14 10th.

15 Q. Correct.

16 A. Not just --

17 Q. Correct.

18 A. I'm flipping to those records
19 and I have them in chronological order.

20 And on this first, we have the
21 first admission that you're asking me to not
22 do.

23 So, on the next weekend -- and
24 this is CCS 18, this is where the nurse notes

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1 these medicines on the medication
2 verification, they speak with Dr. Mitchell
3 who approves the medicines and says approved.
4 I believe that these shorthands for positive
5 are give him and the shorthand for negative
6 was not to give him.

7 A nurse saw Ms. Filichia on the
8 15th. She starts these three medications.
9 She does not start this medication.

10 There is likewise an order for a
11 chart that says that. The nurse saw her,
12 talked with, this is a telephone order again.
13 Spoke with Dr. Mitchell and orders three
14 medications. I'm sorry, four medications and
15 not only did they speak to her that day, but
16 Dr. Mitchell didn't sign. They have an
17 order.

18 Q. Stop right there. Let's just do
19 that one.

20 There is nothing in those two
21 documents indicating that anyone spoke with
22 Miss Filichia directly at all; isn't that
23 true?

24 A. I don't believe you can draw

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1 that inference. I believe they would have to
2 speak to her to find out what medication she
3 was on.

4 Q. Isn't it true that if Miss
5 Filichia brought in a bag of medications as
6 she did on her last visit to the Delaware
7 County jail, that a nurse could make that
8 report without speaking to her?

9 A. So, you're saying that unlike
10 Nurse Bloomfield who actually went up there
11 to the booking desk, saw her, did an
12 assessment, they could have not done that on
13 that day. Is that what you're saying?

14 Q. Yes. There's no written record
15 that she was assessed that day; isn't that
16 true? There's no written record she was
17 assessed that day?

18 A. I don't believe that's
19 consistent with normal nursing practice.

20 But is it theoretically possible
21 that someone could not do that, yes. She was
22 assessed; whether she was assessed face to
23 face or whether they were assessing her
24 medications.

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1 Q. Here's what I'm saying.

2 You just said that is not normal
3 nursing practice. Do you remember just
4 saying that?

5 A. I do.

6 Q. Okay. So, what I'm asking you,
7 is if there's -- the record is absent of a
8 document indicating that she was assessed,
9 other than the medication record for the
10 weekend of January 15th through the 17th. Is
11 that right?

12 A. The record has a medication
13 verification sheet.

14 Q. Uh-huh.

15 A. The record also has that
16 Dr. Mitchell was called and gave some
17 medications and by a nurse and that is the
18 only nursing note that I see during that
19 weekend, that is correct.

20 Q. Okay. Thank you.

21 You're -- you previously
22 stated -- the reason I'm asking these
23 questions is because you previously stated
24 that on the weekends when Miss Filichia came

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1 to the Delaware County jail, she was
2 assessed. And I'm trying to determine,
3 Dr. Fowlkes, how you can make that
4 determination from the record in front of
5 you. On the weekend of the 15th through the
6 17th, all you see is a medical administration
7 record and some approvals from Dr. Mitchell;
8 correct?

9 MR. DOWNEY: Objection to form.
10 I don't know what exactly you asked him.

11 BY MS. PROBST:

12 Q. So -- but -- I'm trying to have
13 a conversation without seeming like I'm
14 attacking you because I'm not trying to. I'm
15 trying to understand how you can conclude she
16 was assessed from the written record?

17 A. During that weekend, there
18 was -- at least that interaction, that
19 assessment. And there's not only that, but
20 the medications were prescribed.

21 Q. So there was a medication
22 assessment?

23 A. Okay. And orders given by the
24 doctor.

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1 Q. To take those medications that
2 were listed?

3 A. Yes. And one of the medications
4 that was -- there was also the order for
5 Flagyl, which wasn't one of those
6 medications. And in is some other mention in
7 the record about where that was because if
8 you recall, that was before the 2/4,
9 emergency department visit where she was
10 given Flagyl and I believe there is some
11 mention in the record about why she was on
12 that Flagyl.

13 And I don't recall what -- I
14 can't make you a -- I can point to that where
15 in the record it is. There is some
16 discussion of that.

17 In addition to that, she is
18 prescribed the medication. She's prescribed
19 the medication. She's prescribed the
20 medication, according to this on that
21 weekend. Let's move to the weekend on the
22 23rd where that happens again and in addition
23 to that, there's the gastrointestinal. She's
24 seen by a nurse for the gastrointestinal

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1 complaint.

2 Q. The gastrointestinal protocol is
3 what you're discussing now; correct?

4 A. It's called a pathway where she
5 was seen in response to a complaint and that
6 pathway was utilized, yes.

7 Q. A complaint about abdominal
8 pain; isn't that right?

9 A. That is correct.

10 Q. All right. That particular
11 pathway that you're discussing is not or was
12 never used in assessing Ms. Filichia on
13 February 20th, 2016 or February 21st, 2016?

14 A. It's not an assessment document,
15 so, therefore, it was not used, that is
16 correct.

17 Q. I know it's not an assessment
18 document. But it was not used; right?

19 A. If it was, it is no longer in
20 the record.

21 Q. Like the assessment.

22 MR. DOWNEY: Objection.
23 Argumentative.

24 BY MS. PROBST:

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1 Q. Would you agree that a nursing
2 note entered 11 days after Miss Filichia died
3 was outside the acceptable standard of care
4 for a nurse?

5 MR. SCHUMACHER: Objection.

6 MR. DOWNEY: Object.

7 BY MS. PROBST:

8 Q. Go ahead.

9 A. No, I would not agree with that.

10 Q. You think that it's within the
11 standard of care to make late nursing note
12 entries?

13 A. I believe that it's within the
14 standard of care to make a note at any time
15 to reconstruct a note at any time when one
16 recognizes that a previously made note is not
17 there or is not documented in whatever
18 fashion.

19 Q. Do you believe it's within the
20 standard of care to create a nursing note to
21 replace a note that was never taken? Do you
22 believe it is within the standard of care to
23 create a nursing note to replace a note that
24 was never taken?

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1 A. I believe it could be
2 appropriate for you to document an
3 interaction with a patient after the fact,
4 even if you had not created any note in the
5 first place, yes. Yes, I do believe that is
6 appropriate. No, I don't believe that that
7 would be a violation of standard of care.

8 MS. PROBST: I don't have any
9 other questions.

10 MR. DOWNEY: No questions. I
11 don't have any questions today. Thank you.

12 MR. SCHUMACHER: We'll read and
13 sign.

14 - - -
15 (Whereupon, the deposition
16 concluded at 2:12 p.m.)

17 - - -

18
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22
23
24

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C E R T I F I C A T E

I hereby certify that the proceedings
and evidence noted are contained fully and
accurately in the notes taken by me on the
deposition of the above matter, and that this
is a correct transcript of the same.

Teresa M. Beaver

Teresa M. Beaver

(The foregoing certification of this
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of the same by any means, unless under the
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DEPOSITION ERRATA SHEET

Case Caption: BERRY V. DELAWARE COUNTY

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of my
Deposition taken in the captioned matter or
the same has been read to me, and the same is
true and accurate, save and except for
changes and/or corrections, if any, as
indicated by me on the DEPOSITION ERRATA
SHEET hereof, with the understanding that I
offer these changes as if still under oath.

Signed on the 23RD day of

October, 2017.

Thomas Fowlkes, MD

THOMAS FOWLKES, M.D.



A handwritten signature in cursive script, likely belonging to the notary public Ashley Frye.

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DEPOSITION ERRATA SHEET

Pg 6 - line 20
+ Pg 25 - line 7

Page No. _____ Line No. _____ Change to: _____

Fayette should be Lafayette

Reason for change: transcription error

Page No. 12 Line No. 1 Change to: _____

DD's should be struck

Reason for change: transcription error

Page No. 21 Line No. 6 Change to: _____

doses should be overdoses

Reason for change: transcription error

Page No. 94 Line No. 22 Change to: _____

NCCH should be NCCHC

Reason for change: transcription error

Page No. 95 Line No. 2 Change to: _____

objection should be example

Reason for change: transcription error

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DEPOSITION ERRATA SHEET

Page No. 102 Line No. 8 Change to: _____
"And stating" should be "I stated my"

Reason for change: transcription error

Pg 111 - line 8
Pg 112 - line 6
Page No. _____ Line No. _____ Change to: _____

Orr's should be OARRS

Reason for change: _____

Page No. 116 Line No. 2 Change to: _____
"male P.E.N." should be "opinion"

Reason for change: transcription error

Page No. 117 Line No. 6 Change to: _____
2ND cannot should be can

Reason for change: transcription error

Page No. 132 Line No. 2 Change to: _____
elicit should be illicit

Reason for change: transcription error

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DEPOSITION ERRATA SHEET

Page No. 138 Line No. ¹⁵20 Change to: _____

Bloomfield should be Filichia

Reason for change: _____

Page No. 142 Line No. ⁵6 Change to: _____

him should be them

Reason for change: transcription error

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

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